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# HOOVER'S LEGACY

## A Nationwide System of Political Surveillance Based on the Spurious Authority of a Press Release

FRANK J. DONNER

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# LETTERS

## press gang

*Los Angeles, Calif.*

DEAR SIRS: Since I am an attorney specializing in military law and a former member of the Harvard Law School Committee for Legal Research on the Draft (now the Committee for Military Justice), I read with great interest Kevin McAuliffe's "Recruiters' Hard Sell: The Small Print of Enlistment" [*The Nation*, May 4].

One very important and recurring problem not mentioned in McAuliffe's article is the method by which the Marine Corps ("looking for a few good men") has recruited since the end of the draft. In case after case I have found that Corps recruiters read their local newspapers to determine what young men in their communities have been arrested and are awaiting trial, or in the case of minors . . . make discreet inquiries at Probation and Public Defenders offices. . . . The recruiters . . . put pressure on these young men to enlist in order to have the charges against them dismissed or otherwise compromised. The recruiters, often with the help of local judges and other judicial officials (including defense counsel!) paint a bleak picture for the prospective "enlistee" if he refuses to join up, and threats of jail sentences are explicitly used.

Based upon my own experience with young Marines either dissatisfied with the Corps or in disciplinary trouble, more than 50 per cent of those who enlisted since the end of the draft have been "recruited" in this way. Often, the recruiters must "teach" the enlistees how to cheat to pass the mental and physical tests which the enlistee may have flunked before. . . .

The Marine Corps, evidently desperately needing a few good men, refuses to do anything about this situation, though Marine Corps trial and defense counsel have informed me time and again that it is these impressed enlistees who are most often involved in the Marine Corps' "justice" system.

*Scott J. Tepper*

## Gandhi's truth

*South Acworth, N.H.*

DEAR SIRS: George Woodcock's review of Raghavan Iyer's *The Moral and Political Thought of Mahatma Gandhi* [*The Nation*, May 18], strikes me as surprisingly superficial in his estimation of Gandhi's philosophy. . . . He supports his thesis—that Gandhi as a moralist and thinker cannot be taken seriously—by two examples. First, he refers to Gandhi's "undistinguished pleas for vegetarianism," but fails to note that these were written while Gandhi was still a student in London. Does Woodcock evaluate Marx, Hume or Locke on the basis of such early writings?

Second, he says, "Gandhi tampered with factual and perhaps with moral truths when he tried to convince himself and others that his famous fasts were other than acts of coercion." May I quote some of Gandhi's words to show how murky and shallow is Woodcock's charge? (From Gandhi's letter of Sept. 15, 1932 to the Bombay government regarding his impending fast): "Above all it is intended to sting Hindu conscience into right religious action. . . . It is aimed at a statutory separate electorate, in any shape or form, for the Depressed Classes. Immediately that threat is removed once for all, my fast will end."

Of course fasting had a coercive dimension. Gandhi also believed it had other, more important, spiritual dimensions which, it may be, Western political critics cannot understand.

*Arthur Harvey*

**The editors welcome letters from readers but regret that space limitations often prevent publication of those of more than 250 words.**

# EDITORIALS

## Terror Tactics

The most recent acts of political terrorism—the seizure of eighty-five teen-age schoolchildren as hostages at Maalot and the subsequent murder of twenty-six of them, and the bombing in Dublin which took the lives of twenty-three civilians and critically injured 137, with five more killed and twenty injured in Monaghan, a village 80 miles north of Dublin near the border—stand out even in the mounting catalogue of such horrors as particularly revolting, barbaric and senseless. These latest instances call attention to a new and deadly danger which has emerged in recent years, namely, the practice of terror—usually against civilians, bystanders, children, women, the unarmed and defenseless—as a form of warfare "legitimized" by the failure of the world community to outlaw it.

Terror is an old tactic but it has taken on new dimensions in an age of mass communications. In the past, acts of terror were generally directed against specific targets—the bombing of a police station or an armory, or the assassination of informers or defectors. But now the targets—by preference—are those least able to defend themselves and only marginally identifiable as partisans and that by a distortion of what used to be regarded as the rules of war. Increasingly, terrorism has become "a slaughter of the innocents," first because they are defenseless, and second, because their slaughter makes for bigger and blacker headlines and more dramatic media news.

Today, as always, acts of political terrorism are justified in terms of a "cause" of transcendent merit and importance, be it the survival of a faith, tribe, nation or people. The claimed excellence of the cause warrants any violence in its defense or furtherance. The tactic is most frequently applied by the weak and frustrated, by the disadvantaged against the advantaged. And today the weak and frustrated are able to parlay acts of terror, which are inherently difficult to guard against, into a kind of substitute for the war they cannot wage. As such acts and the reprisals they invariably invite (the day after Maalot, Israeli raids on Palestinian refugee camps and commando bases in Lebanon left fifty dead and more than 200 wounded) increase in number and violence, and are extended over time, the cumulative horror comes to constitute a new form of madness akin to war.

In some respects it is a greater threat to what is left of civilized relations between states than some forms of warfare. Terror becomes an end in itself. Raids are staged for the sake of the havoc they cause; reprisals are undertaken for the same purpose. Slaughter is directed against "the enemy" not to weaken him or bring him to the peace table but to make headlines in the world press. Acts of terror are sometimes staged not so much to injure "the enemy" as to advance the interests of one clique of terrorists against others ostensibly enlisted in the same cause. Often these acts have no conceivable relation to the end cited to justify them; indeed, they often work against those ends. Both sides lose sight of the issues that divide them and become obsessed with matching acts of reprisal against acts of terrror.



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At the same time, modern mass communications have invested acts of terrorism wtih special properties. The atrocities are communicated to a world audience with a speed, directness and force that are themselves a psychological form of violence. Sometimes the event is seen live. "Event by event," as the *St. Louis Post-Dispatch* noted recently, "terror becomes reinforced as a global language." Such is the effect of these actions that they undermine the judgment and perception of the viewing audience. The event, witnessed on the tube, blots out the viewer's never very clear perception of the issues. What he feels is horror, not understanding; aversion or hostility, even perhaps gratification at the violence, not the need for reconciliation. That even the partisans lose sight of the objective may be seen from the rioting that broke up a funeral procession in Damascus for the three executioners of the Maalot teen-agers.

If in the case of Maalot, the objective of the terrorists was to upset Kissinger's negotiations for an Israeli-Syrian cease-fire, they apparently did not succeed and in fact may have encouraged the opposite effect. Similarly, it is hard to see how Ulster groups—inferentially Protestant, probably Orange Order extremists—served their cause by the bombing in Dublin. Nor is it clear that IRA violence, which has taken a heavy toll in the North, has done much to bring about the unification of North and South. What this kind of violence does is breed more violence. If there is hope in Ireland and the Middle East, it is to be found in the fact that this truth is beginning to emerge. Terence Smith reports in *The New York Times*—and his report carries conviction—that a significant number of Israelis are beginning to question the effectiveness of reprisal raids. Where, they ask, is this supposed to lead? "When does the cycle end?" an anguished woman asked at a state funeral for the Maalot victims. "Is there nothing else we can do?"

Whatever the answer to her question, something can be done here. A bipartisan group in the House and Senate has been pressing a resolution which expresses the sense that the sponsors strongly condemn the Maalot murders and all acts of terrorism; urge the President and Secretary of State to call upon governments to condemn these inhuman acts against innocent victims; and exhort the countries where terrorist groups hide out to take appropriate action against them. More to the point is Senator Javits' reference to the bankruptcy of some countries at the U.N., and outside the U.N., in that they do not deal with the issue of terrorism "which is a threat to all the world. A number of U.N. nations act on the theory that by failing to condemn terrorism they help in the anti-colonial struggle. That is standing morality on its head." It is also manifestly absurd in the light of the new Arab oil imperialism. The reprisals have been condemned before; now the raids should be condemned. The U.N. has too long tried to apply a double standard. And there is good sense too in Representative O'Neill's charge that Washington has not in the past assumed leadership at the U.N. on the issue. Terrorism has become a substantive matter in itself; it has become an evil to be condemned for the horrors it precipitates, including the reprisals, but also for the threat it poses to negotiations which, if they were to succeed, might make it possible to settle some of the underlying issues. Some affronts against tolerable behavior cannot be ignored without jeopardizing the chance of settling the issues that divide men, faiths, tribes and nations.

## Televised Live in Color

The years of TV Westerns, replete with shoot-outs and manslaughter, have culminated in the real thing. When San Francisco became too hot for the Symbionese Liberation Army, they sought refuge in Los Angeles where, one official remarked, the police "don't fool around." When the screwball revolutionists were located in the black south central section of Los Angeles, some 400 local police and FBI agents converged on their hideout and exchanged 1,000 rounds of ammunition with the five armed occupants. Considering the disparity in numbers, the outcome was never in doubt. The five perished in a holocaust of gunfire and flames. TV crews set up their equip-

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ment at the first alarm and bravely broadcast the show live for gaping millions.

On the scene, this greatest concentration of gunfire in local police history provided a strange mixture of terror and carnival. Ignoring the danger, neighborhood crowds got as close to the action as they could and had to be driven back by motorcycle police and tear gas. Children and adults alike, they were not going to miss what for them was surely the greatest show they would ever see. A single trace of humanity emerged amid the general barbarity. For hours after the end of the battle it was not known whether Patricia Hearst, whose kidnapping brought the Symbionese Liberation Army into national prominence, was one of the victims. Watching the spectacle on TV in San Diego, Steven Weed, Patty's fiancé, could stand it no longer and drove to the scene. He was quoted in *Newsweek*: "Why didn't they just pull back when the first gunfire happened? Why did they empty an arsenal into the building? Why did they let it burn?"

The FBI in particular was suffering from acute frustration, which could be relieved only by a pitched battle. A Los Angeles policeman radioed for permission to use fragmentation bombs. The police chief refused the request, but the FBI had already begun to use fragmentation grenades and in one area police and reporters were pinned down by flying fragments. When the saturnalia finally ended, the only reliable means of identification was by dental records, which were flown in for the coroner's use. It was not established until the following day that Patricia Hearst was not among the victims.

These people would have been more valuable alive than dead to the forces of law and order. But the FBI and the police were so eager for action that, with the house surrounded and no chance for the occupants to escape, only two brief warnings were issued by the police before the barrage was laid down.

There is not as much difference as law-abiding citizens would like to believe between the psychology of the SLA and that of FBI agents and most police in battle. In this instance, both sides were imbued with the politics of desperation and unlimited force. Locked in combat, the actors, lawful and lawless alike, behaved as if their roles had been written for them in a movie script, stripped of everything human except violence without limit.

But the fact is that terrorism of the kind practiced by the SLA is certain to produce counter terror. Nor is the outcome ever in doubt: the state has a clear preponderance of fire power and most of the time is itching to use it.

## 'That Silly Damned Thing'

Of the issues raised by the Watergate investigations none are more important than those presented in the letter Mr. Nixon has written Judge Gerhard Gesell. In this letter, the President is said to have stated that the Ellsberg-Fielding break-in was carried out under his general authorization. Judge Gesell will now determine, before the six defendants go to trial on June 17, the validity of this contention. The general issue breaks down into related questions: Who determines what is "national security"? What "inherent powers" does the President have which can be exercised in the name of "national security"? Are such powers subject to limitation or review?

At the outset a question of fact arises: what kind of authorization, if any, did the President issue? He has referred to the break-in as "that silly damned thing." When told of it, he exclaimed: "What in the world—what in the name of God?" Later he said the break-in was "illegal, unauthorized, as far as I was concerned, and completely deplorable." By his own account, therefore, no specific authorization was issued. Nor is there any evidence, according to the special prosecutor, that the President had advance information about the break-in. If a general authorization was issued, it presumably related to the problem of preventing "leaks" bearing on "national security." But *The New York Times* began publishing the Pentagon Papers on June 13, 1971, the Plumbers group was not set up until July, and the break-in did not occur until September 3. A general authorization issued after June 13 could have little relevance to this particular "leak," nor is there anything to indicate that the break-in would have helped prevent other leaks.

Moreover, it is clear from the transcripts that the idea of justifying the break-in in terms of "national security" was an afterthought—an off-hand, cynical suggestion made by John Dean. Even more to the point is evidence from the Ervin committee hearings and other sources that the burglars hoped to get material that could be used to smear Ellsberg and thus prevent him from becoming a hero and martyr in the eyes of the peace movement.

Then, too the deviousness with which the President and his aides set about covering up the break-in rebuts the notion that it might have been a "national security" operation. For example, when Silbert told Petersen who told Kleindienst about the break-in, the decision to alert Judge Byrne was taken not by the President but by Justice Department officials and over his objections. And the subsequent approach by the President through Ehrlichman to Byrne suggests that the White House still hoped the judge might be induced to hold the Justice Department memo *in camera* for the time being. Throughout all this backstage intrigue what seems to have been uppermost in the minds of the President and his top aides was not "national security" but the need to win the 1972 election.

But broader issues are involved. "National security" is essentially a cold-war concept, not a constitutional one. Cold warriors think it embraces foreign policy, defense and "internal security." In constitutional terms, any powers the President may have to protect "internal security" derive from his power to enforce the laws. This power, in turn, can hardly be interpreted in a way that would permit violation of the laws against thefts and burglary, not to mention the search-and-seizure provisions of the Fourth Amendment. Dicta can be found in Supreme Court decisions about the President's "inherent powers" in the field of foreign policy and defense, but not much in the way of firm precedents that would justify Nixon's conception of "national security." To be valid, the concept of "national security" should be definable, and definition implies limitations. According to some experts no statutory authority gives the President the power to determine, unilaterally, what does or does not fall under



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the heading of "national security." The wiretap cases would indicate that, where the alleged threat involves "internal security," otherwise illegal actions cannot be justified in the name of "national security." As Philip B. Heymann, of the special prosecutor's staff, argued before Judge Gesell on May 21: "No case has ever suggested a national security exception to the Fourth Amendment. No Attorney General has ever claimed that he or some subordinate official, has the right to authorize the break-in and seizure of papers." Apparently Judge Gesell shares this view. At one point in the argument he said to defense counsel: "You say the Fourth Amendment is ambiguous. What is confusing about it?" And later he observed: "What this case is all about is respect for law and government. . . . My concern is with the wisdom of creating a precedent which allows individuals who are not law-enforcement officers, who have no authority from the President and no search warrant, and, on their own notion of what is good for the country, bust into the homes and residences of honorable citizens."

One thing is clear. No more important issue has emerged from the Watergate inquiries than the need to examine the President's assertion of a virtually unlimited power, in his sole discretion and without judicial review or legislative restraint, to safeguard "national security." Egil Krogh was driven to conclude that the emphasis on "national security" as a means of justifying the Plumbers' actions seemed to "block critical analysis" and ultimately involved nothing more than the freedom of the President to pursue a planned course of action by any means deemed appropriate. By inference, measures might be taken under the President's view of "national security" that would involve the suppression of domestic dissent. Indeed the attempt to enjoin publication of the Pentagon Papers aimed at suppressing information vital to an informed public opinion on a major issue. The issues raised by the President's letter to Judge Gesell go to the heart of the question of whether the Constitution still provides a shield against usurpation of power by a President determined to act in an authoritarian manner. The contents of this special issue of *The Nation* underscore the gravity of these issues.

## The Hemisphere Connection

Latin Americans have long complained that they can seldom get a straight answer out of Washington. Recently, they had another example. While Henry Kissinger was promising Latin American foreign ministers that their country's exports would soon have easier access to U.S. markets, Treasury Department agents were in Brazil and Colombia looking at the way those countries stimulate their exports—with an implied threat that Washington might impose new duties if exporters were being given government subsidies.

Specifically, the Treasury people were probing reports that Brazil gives an export subsidy to its footwear industry, which does an $81 million a year business with the United States, and that Colombia offers a similar stimulous to cut-flower growers who sell $8 million worth of carnations and other flowers to the United States.

All of this makes Dr. Kissinger's assurances less encouraging to the Latins. In fact, within hours of his speech in Atlanta before hemisphere foreign ministers, Brazilian and Colombian complaints were mushrooming about the Treasury Department's investigation. "How can Kissinger tell us one thing and then expect us to be enthusiastic when we have the Treasury doing something else?" asked a Brazilian at the meeting.

"Washington speaks out of both sides of its mouth," a Colombian source at the meeting complained. "We well remember President Johnson's urging us to diversify our exports and President Nixon's promises to open up U.S. markets to these exports, and now we come face-to-face with the threat of new duties. . . . It makes us wonder if we can trust anyone in Washington."

For its part, State Department officials say Treasury was merely acting in accordance with an obscure law that requires it to investigate charges of export subsidy and then to impose "countervailing" duties equivalent to the subsidy if the charges are found to be true.

To Latin Americans, this begs the issue, which is how they are to develop their underdeveloped economies if Washington intends to stymie them at every turn. After all, they ask, doesn't Washington talk about the special relationship between the United States and the rest of the hemisphere? Moreover, Latin Americans point out that they are not responsible for the continuing U.S. trade imbalance. This country has a solid $700 million trade surplus with Latin America.

All of this should be a warning to the Administration that it simply cannot get along with mere promises of improving the hemisphere relationship. Actions are going to do the speaking in the long run. One also wonders why the Treasury Department chose this moment to dredge up an old law that gave it authority to investigate export subsidies. The legislation has seldom been invoked, and Treasury has wide discretionary powers to determine import policies in the national interest. The Latin Americans know this well enough.

The shoe and cut-flower exports are relatively minor issues in the context of total Latin American trade with the United States. And the Latin Americans are correct in noting that all nations, including the United States, use various overt and hidden subsidies to stimulate their foreign trade. What worries the Latin Americans—as indeed it should—is that Washington may be embarking on a wide probe of the whole question of trade.

It all amounts to one more sorry spectacle in Washington's relations with Latin America. If Dr. Kissinger is sincere, as most Latin Americans tend to believe, he is going to have to convince Treasury and other branches of government that trade stimulation is in the best interests of the United States. Washington cannot live easily with an underdeveloped Latin America unable to boost its exports in a variety of ways. Any harm done in the short run to United States manufacturers by the import of good quality Latin American products is offset by the growth of a more viable Latin America. In the long run, everyone benefits and Dr. Kissinger said so in Atlanta. But unless he can somehow get the rest of Washington to agree with him, there isn't much hope that he will be able to fulfill his promises to the Latin Americans.

JAMES NELSON GOODSELL



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# HOOVER'S LEGACY

**Frank J. Donner**

It has been said of J. Edgar Hoover that in his prime he had more admirers than any other American and that he was the most popular unelected public official in our history. In terms of power, he was certainly large. Director Hoover was not only the nation's police chief; he filled a far more important post—he was its minister of internal security, an office of tremendous, if unacknowledged, power which he held continuously in six administrations. And from this base he organized a totalitarian-style political police force, developed a Congressional and mass constituency that sheltered him from interference or control by his nominal superiors, and harassed and blackmailed critics and enemies. Even that recital hardly exhausts the Director's achievements. To renew and expand his powers, he annexed to his investigative apparatus a propaganda ministry which sponsored and processed hundreds of his speeches and articles on the theme of the threat of subversion.

The legitimacy of this entire enterprise was ascribed to a claimed delegation of authority to conduct investigations into the politics of Americans, not for the purpose of collecting evidence of a specific crime but to monitor subversives on a continuing basis—an implementation of what the Director called his "internal security jurisdiction" or, in the grandiose lingo of intelligence, the bureau's "mission." That mission, it is my purpose to show, is based on a spurious certificate: for more than three decades a secret police force has spied into and kept records on the lives of Americans, without authority from either Congress or the Executive.

The bureau's jurisdiction to investigate radicalism without a specific law-enforcement purpose is based, according to Hoover, on a "Presidential Directive" of September 6, 1939. Again and again, this is pointed to as the Magna Charta of the bureau's intelligence mission. For example, its 1965 Annual Report asserts: "The FBI was charged with the primary responsibility for the protection of the internal security of the United States by Presidential Directive on September 6, 1939." According to the semi-official account by Don Whitehead, this directive made the FBI "not only a crime-fighting organization, but also an intelligence agency. . . . In contrast to intelligence work in the past, which had been limited to specific, short-term assignments, President Roosevelt made the FBI's responsibility a continuing one, involving a broad new front." It is imperative to establish the meaning and purpose of this Presidential document: if it cannot be construed to confer such authority—in effect to operate a political police force—we Americans have been the victims of a massive usurpation of power in an area of basic importance to the democratic process.

Before exploring the validity of the bureau's claimed authority, we need to know what that authority embraces. The bureau has the undisputed power to collect evidence for possible use in a prosecution; this is referred to as the bureau's "general investigative" responsibility. It is a "closed end" operation, shaped by the law-enforcement process. The tightness of the link between investigation and law enforcement is extraordinary: with minor exceptions, the bureau derives its investigative authority from its general arrest power, not from any broad investigative mandate. But the bureau also asserts a right, or duty, to pursue "open-ended" intelligence-type investigations, independent of its broad investigative powers and unrelated to law enforcement. This "internal security" jurisdiction encompasses ongoing surveillance of domestic "subversives," as well as defensive operations against foreign spies and saboteurs (counterintelligence).

Did the government in an unguarded hour bestow upon a corps of political police agents, responsible to Director Hoover alone, the permanent mission of protecting the safety of the Republic? The decision to activate such a unit is always one of the most portentous a modern state can take, because it institutionalizes a function that may well become an independent center threatening the established organs of representative government. Under our system, if such a function were permissible at all, it would necessarily require a sharply limited scope and a clearly understood set of guidelines.

Even more is involved in this inquiry. It is indispensable to an orderly society that crimes be punished. Law enforcement and crime prevention require investigations of suspects. Few would claim that such a probe constitutes an intolerable invasion of privacy. But when the state authorizes an investigation into political beliefs, expression and association, it crosses over into wholly different country. The search for actual or potential enemies of the government necessarily embraces enormous masses of people and a huge area of their private lives—far more extensive than their formal political associations and expressions. In order to make an adequate judgment about a subject's politics, an investigator may find it necessary to probe his habits, visitors, reading preferences, use of leisure time, views on topics of the day, life style, his educational background, the books in his library, the identity of his correspondents—the list is not short. Moreover, both the population of subjects and the areas of privacy to be invaded are expanded by the investigator's occupational bias. Why take chances when the safety of the government is at stake? And this exaggeration, ironically enough, is virtually required in a democratic system, since only very great danger, emergency or threat can justify such extraordinary violations of our political covenant. Revealing light is cast on Hoover's claim by a number of documents in the Roosevelt Library at Hyde Park.

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*Frank Donner is director at the Yale University Law School of the American Civil Liberties Union research project on political surveillance. This study is adapted from a book on the subject to be published by Holt, Rinehart & Winston.*



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## The Alleged Mandate

On September 6, 1939, two weeks after the signing of the Nazi-Soviet Nonaggression Pact and three days after Britain and France had declared war on Germany, President Roosevelt issued a "formal statement" (as it was designated in the document itself) to local law-enforcement authorities. It reads:

> The Attorney General has been requested by me to instruct the Federal Bureau of Investigation to take charge of espionage, sabotage, and violations of the neutrality regulations.
>
> This task must be conducted in a comprehensive and effective manner on a national basis, and all information must be carefully sifted out and correlated in order to avoid confusion and irresponsibility.
>
> To this end I request all police officers, sheriffs, and all other law-enforcement officers of the United States promptly to turn over to the nearest representative of the Federal Bureau of Investigation any information relative to espionage, counterespionage, sabotage, subversive activities and violations of the neutrality laws.

The September document was the final product of a three-month period of behind-the-scenes deliberation and some interagency rivalry. On June 17, 1939, Attorney General Murphy had written Roosevelt about a problem of growing importance, the handling of war-connected investigations concerning "espionage, counterespionage and sabotage."

An informal committee consisting of representatives of six different government departments had been serving as a clearing house for data which were collected by the FBI, the G-2 section of the War Department and the Office of Naval Intelligence. But Murphy pointed out:

> Experience has shown that handling such matters through a committee as is described above, is neither effective nor desirable. On the other hand, the three investigative agencies last mentioned have not only gathered a tremendous reservoir of information concerning foreign agencies operating in the United States, but have also perfected methods of investigation and have developed channels for the exchange of information, which are both efficient and so mobile and elastic as to permit prompt expansion in the event of an emergency.

Murphy therefore recommended to the President a concentration of "investigation of all espionage, counterespionage, and sabotage matters" in the three investigative agencies and the issuance of apppropriate confidential instructions to all the department heads involved.

The primary purpose of this counsel was to resolve a jurisdictional dispute over responsibility for this work. The directors of the bureau, military and naval intelligence were to be responsible for coordinating the intelligence effort, and the President, acting on Murphy's recommendation, on June 26 directed all other federal agencies to refer to the FBI "any data, information or material that may come to their notice bearing directly or indirectly on espionage, counterespionage or sabotage."

Certainly up to this point, no claim can be made of a broad delegation of power to the bureau to monitor radicalism as such. Just as the June recommendation and directive were intended to prevent too many governmental cooks from evaluating war-connected intelligence, so the September communication was intended to assign the bureau responsibility for its collection.

The September 6th statement was intended not to open up a "broad new front" of intelligence collection but rather to protect Americans from the "confusion and irresponsibility" of World War I when the super-patriots had conducted their spy hunts. It was, in short, an effort to guard the nation against espionage and sabotage with a minimum sacrifice of civil liberties. On the day the President's statement was released, Murphy announced to the press: "Foreign agents and those engaged in espionage will no longer find this country a happy hunting ground for their activities. . . . At the same time . . .it must not turn into a witch hunt. We must do no wrong to any man." In a subsequent address to the National Police Academy, Murphy re-emphasized that the country was prepared to run down spies, "But we will not act on the basis of hysteria. . . . Twenty years ago inhuman and cruel things were done in the name of justice; sometimes vigilantes and others took over the work. We do not want such things done today for the work has now been localized in the FBI."

Director Hoover followed with a speech in which he warned against hysteria and witch hunts. But he did not neglect the "termites" undermining the nation's foundations. "It is known that many foreign agents roam at will in a nation which loves peace and hates war. At this moment lecherous enemies of American society are seeking to pollute our atmosphere of freedom and liberty. . . ."

It is thus plain to see that the foundation on which the FBI rests its claim of intelligence authorization is shaky indeed. The contention that Roosevelt's statement created a continuing intelligence responsibility, a "broad new front," is refuted both by its context and language. It was a press release intended to implement the June directive to the Cabinet which dealt exclusively with war-connected crimes.

If the September 6th statement indicates merely that the FBI had already been officially made responsible for investigating specific war-connected offenses, why has it been so insistently invoked as the support for a larger claim of continuing jurisdiction over all sorts of political dissent, both expressions and associations? A primary reason is that the limitations in the earlier document were embarrassing to a broad claim that the bureau had been permanently launched in the political intelligence field.

The September 6th document was a little more malleable (besides, it had been made public). While its first paragraph referred only to "espionage, sabotage, and violations of the neutrality regulations," the appeal in the third paragraph for cooperation from local law-enforcement authorities referred to "subversive activities." That phrase became Hoover's justification for disregarding the limitations of war-connected crimes and for claiming "internal security" jurisdiction on a continuing basis.

But the vague language of the document's last paragraph, merely requesting cooperation by local authorities, could hardly serve to expand the limitations of the authority granted to the FBI in the first paragraph—limitations explicitly set forth in the formal order of June 26.

The only other relevant official document is an Executive Order of September 8, 1939, authorizing the Attorney



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General to increase the personnel of the FBI by 150 agents. The order justifies a need for the added manpower by referring first to an emergency proclamation issued on the same day which stresses the necessity for safeguarding neutrality and strengthening the national defense. A second "whereas" refers to the FBI's "additional and important duties in connection with such national emergency."

### Boom Days at the Bureau

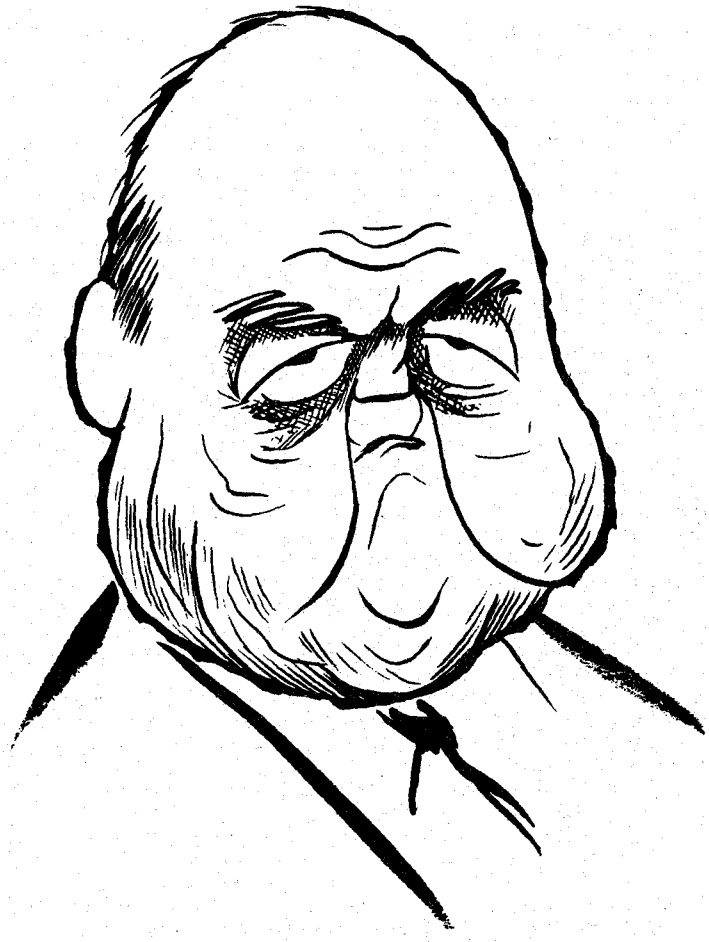
On November 30, 1939, Hoover appeared before the House Appropriations Committee to justify a supplemental emergency appropriation of about $1.5 million to fund the President's new assignment for the remainder of the fiscal year and to pay the salaries of the additional agents. Although the budget bureau had authorized an increase under the heading of "detection and prosecution of crime," Hoover explained that "this entire sum will be spent for intelligence work which has been initiated during this year."

The supplemental estimate also included an additional $100,000 for the "confidential fund"—i.e., money to pay informers. The extraordinary character of this commitment can be seen from the fact that only $20,000 had been appropriated for this purpose for the entire fiscal year 1940.

A second newly inaugurated program also required funding. "In September of 1939 we found it necessary," Hoover explained, "to organize a General Intelligence Division in Washington. The establishment of this division was made necessary by the President's proclamation directing that all complaints of violations of the national defense statute and proclamation be reported to the Federal Bureau of Investigation. This division now has compiled extensive indices of individuals, groups and organizations engaged in these subversive activities, in espionage activities, or any activities that are possibly detrimental to the internal security of the United States."

The indices were justified as a preventive safeguard against future subversion. To this was added a special spy pitch. Hoover testified that, in contrast to fiscal 1938, when only 250 complaints were received involving violations of national defense statutes, during the fiscal year ending June 30, 1939, 1,651 such complaints were received; since that time, Hoover further reported, 214 such complaints were being received daily, with the result that during the next fiscal year the total number could be expected to soar to "about 78,000."

These figures raised some eyebrows among Congressmen. "About what percentage were you able to dispose of as preposterous on their face? . . . What percentage of the complaints have not any substance?" one Congressman asked. Hoover insisted that none of the 214 daily complaints was preposterous on its face. And, he solemnly added, "only a small percentage turned out after investigation to lack substance." Only the vigilance of the General Intelligence Division could save the country from these swarms of spies. But there was no cause for Congressional concern. After all, the entire intelligence operation was to be of limited, emergency duration. "Will these additional people be kept on through the next fiscal year if the emergency continues?" asked Congressman Woodrum. "If



*J. Edgar Hoover* Pierotti

the emergency continues," Mr. Hoover responded. "But," Congressman Woodrum persisted, "if the emergency does not continue, you anticipate that the force will be reduced?" Hoover agreed, while at the same time pointing out that he had established "ten new field offices to conduct this work in various parts of the country."

This apparent commitment to permanence led Congressman Woodrum to ask for a third time, "And if the emergency ceases, the need for the additional force will cease?" "Yes," Mr. Hoover again replied. That was more than thirty years ago. World War II came and ended, but the "emergency" never ceased.

On January 5, 1940, Hoover asked the House Appropriations Subcommittee to approve a budget of $10 million for fiscal 1941. One-fourth was for "national defense," including another $100,000 for the confidential fund.

The Roosevelt administration did nothing to restrain the Director from converting the September 6th document into a license to hunt radicals and liberals along with Communists and other "subversives." There were mutterings about Hoover's high-flying operation, especially from Interior Secretary Harold Ickes, but the Director quickly developed a mass constituency—some of which had been lying dormant since the 1920s—as well as a Congressional cheering section. He was assisted on the Congressional front by the Dies Un-American Activities Committee, organized in 1938, with which he developed cordial ties. Ironically, an important reason for the administration's failure to clip his wings was the belief that he could



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provide a "professional" answer to the Yahoos of the committee which, by the fall of 1939, was baiting the administration's tolerance of alleged subversives with increasing effectiveness. But Hoover saw more to be gained from a concordat with the committee.

### Mr. Fixit's Road to Power

Hoover lost no time in restoring himself as monarch of the kingdom of political surveillance from which he had once been banished. He quickly developed direct access to President Roosevelt by regaling him with gossip about his political opponents (especially those whom Hoover also disliked) and by serving as a general factotum for the President and his family—a role which President Nixon later assigned the Secret Service. For the Chief Executive, Hoover became a handyman, a Mr. Fixit. Attorney General Biddle describes the technique:

> I sought to invite [Hoover's] confidence and before long, lunching alone with me in a room adjoining my office, he began to reciprocate by sharing some of his extraordinarily broad knowledge of the intimate details of what my associates in the Cabinet did and said, of their likes and dislikes, their weaknesses and their associations. . . . His reading of human nature was shrewd, if perhaps colored with the eye of an observer to whom the less admirable aspects of behavior were being constantly revealed.
>
> He knew how to flatter his superior, and had the means of making him comfortable. The Attorney General, when he was traveling, could count on an agent to meet him at the station, to settle him on his plane with an armful of newspapers, to take him in an FBI car wherever he wished to go. But he also showed a friendly thoughtfulness on more than one occasion when it was not called for, and made me feel that our relationship was not without cordiality on both sides.

A member of the Roosevelt circle and an intimate of Attorney General Biddle told me in an interview:

> Once Hoover developed this personal relationship with President Roosevelt, there was no stopping him. The Attorney General—whether it was Murphy, Jackson or Biddle—had neither the guts nor the inclination to tangle with the man they were supposed to supervise and control. After all, Hoover was only a Bureau Chief in a large department, but there seemed to be no way to stop him. There was also a feeling that he was tapping his critics and potential critics and even deeper fear that he had files on everybody. On top of all this he had a lot of supporters in Congress and around the country. What a shrewd P.R. man he was!

He was indeed shrewd. In 1940 alone he wrote at least eight articles and made at least seven speeches, largely glorifying himself or the bureau. This early output set a later pattern. The articles were published both in nationally circulated periodicals (*American Magazine, This Week*) and in obscure ones (*Signs of the Times*); the audience for the speeches ranged from the DAR and American Legion (favorite hosts) to women's clubs and police groups.

One begins to see the elements of the Director's formula for success: courtship of important power centers, a shrewd testing of the resistance of his immediate superior to being by-passed, the development of a mass base and, along with it, a cultivation of Congressional support. Only one additional ingredient needs to be mentioned: Hoover's eagerness for power and glory was matched by his resentment of criticism. He could not tolerate boos that could occasionally be heard through the applause, and he used the resources at his command—files, political leverage, public denunciation, planted attacks by Congressional allies—to silence or discredit his critics.

Before examining how the bureau interpreted and applied its claimed internal security jurisdiction, we should complete the examination of the documentation said to support the claim. The published regulations of the Attorney General's office that are applicable to the bureau mention—in addition to and separate from such responsibilities as criminal investigations, the acquisition and filing of records, personnel investigations—the duty, under the supervision and direction of the Attorney General, to:

> Carry out the Presidential directive of September 6, 1939, as reaffirmed by Presidential directives of January 8, 1943, July 24, 1950, and December 15, 1953, designating the Federal Bureau of Investigation to take charge of investigative work in matters relating to espionage, sabotage, subversive activities, and related matters.

On May 29, 1941, the War and Navy Secretaries, Stimson and Knox, wrote President Roosevelt to complain of subversively inspired strikes in defense industries and to urge "a broadening of the investigative responsibility of the Federal Bureau of Investigation in the fields of subversive control of labor." A week later, the President stated that he was referring the proposal, with his approval, to Attorney General Biddle. But Biddle was cool to the idea. On June 24, he sent Roosevelt a memo suggesting that the appropriate way to handle the problem was to indict the allegedly subversive leaders under the Smith Act, passed in June 1940, and attaching criminal penalties to the teaching and advocacy of the violent overthrow of government. In support of this recommendation not to expand the jurisdiction of the bureau, James Rowe, Jr., a Presidential aide, sent the President a memo on June 26, 1941, pointing out that, "this particular problem seems to have become academic anyway from the moment Hitler started toward the Pripet Marshes. . . ." This exchange certainly indicates that those in a position to know believed that something more would be required to extend the bureau's investigative jurisdiction to cover the problem raised by the service secretaries.

Some eighteen months later, on January 8, 1943, the President issued a statement entitled, "Police Cooperation," reaffirming the September 6th release and again unmistakably confining it to war-related matters:

> I am again calling the attention of all enforcement officers to the request that they report all such information (relating to espionage, sabotage and violations of the neutrality regulations) promptly to the nearest field representative of the Federal Bureau of Investigation which is charged with the responsibility of correlating this material and referring matters which are under the jurisdiction of any other federal agency with responsibilities in this field to the appropriate agency.
>
> I suggest that all patriotic organizations and individuals likewise report all such information *relating to*



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*espionage and related matters* to the Federal Bureau of Investigation in the same manner.

I am confident that all law-enforcement officers, who are now rendering such an invaluable assistance towards the success of the internal safety of our country will co-operate in this matter. (Italics in original.)

It is noteworthy that this document, which is cited as a restatement of the original grant of authority to the bureau, does not follow in all respects the exact wording of the 1939 statement. The third paragraph in the original had included the words "subversive activities," designating generally activities of the same sort as "espionage, sabotage and violations of the neutrality regulations" mentioned in the first controlling paragraph. But the new statement no longer includes that phrase, referring more restrictively to "information relating to espionage and related matters. . . ." Moreover, in the President's copy this key restrictive phrase is underlined with a pen stroke. Nor is that all. The new statement contains an additional paragraph referring not to a threatened "internal security" (the ritualistically invoked danger justifying a curb on "subversive activities") but to the more specific "internal safety of our country," a logical predicate for "sabotage, espionage and related matters."

On July 24, 1950, in the wake of the eruption of the Korean War, President Truman, guided by Attorney General Clark, reissued the two earlier statements, referring as in the 1939 document to "subversive activities" along with espionage and sabotage, and re-emphasizing, as in the original, the need for a unitary responsibility, cooperation from the law-enforcement community and, as in the 1943 version, from patriotic organizations and, again as in 1943, emphasizing the bureau's role as a clearing house for referring "matters which are under the jurisdiction of any other federal agency with responsibilities in this field to the appropriate agency."

Still a third "reaffirmation" of the original Roosevelt statement was issued on December 15, 1953; but it simply assigned to the bureau the policing of violations of the Atomic Energy Act. No support can be found in the language or context of these documents for the claim that they empowered the bureau to probe legitimate forms of political expression and dissent wholly unrelated on the one hand to war-connected offenses or on the other to collecting evidence of conventional violations of law. And the fact that it was found necessary to "restate" or "reaffirm" them during periods of stress further demonstrates that they were not regarded, even by the Executive, as a source of continuing authority for a domestic intelligence function. They were simply appeals in a wartime setting for "police cooperation," along with a re-emphasis of the bureau's role as a conduit of information to agencies with related responsibilities.

Only one question remains. When Hoover headed the bureau's General Intelligence Division from 1919 to 1924, its operations, both in the Palmer raids and subsequently, were entirely outside the jurisdiction of the Department of Justice. Hoover admitted, in a recently discovered memorandum of February 21, 1920, that deportation was exclusively a Labor Department function, and in May 1924, under the prodding of Attorney General Stone, he further admitted that the subsequent anti-radical surveillance and harassment were also without legal authorization, since the bureau's investigative warrant extended only to the "detection and prosecution of crimes." Both Hoover and the Attorney General pledged to confine the bureau's activities to "cases in which there is a probable violation of federal law." And in October 1924 Hoover, then the bureau's acting director, submitted a memorandum to Asst. Atty. Gen. William J. Donovan stating, "It is, of course, to be remembered that the activities of Communists and other ultra-radicals have not up to the present time constituted a violation of the federal statutes, and consequently the Department of Justice, theoretically, has no right to investigate such activities as there has been no violation of the federal laws."

## Building Files on a Myth

Given the recurrent jurisdictional infirmities in the bureau's intelligence operations of the earlier period and young Hoover's acknowledgment of false claims to such jurisdiction, he could hardly have been unaware that his later reliance on Presidential directives was equally suspect. Similar problems afflict the bureau's authority to develop and maintain intelligence files. In 1924 Hoover and Stone admitted that the bureau's intelligence files had been illegally compiled and the Attorney General promised that these filing practices would be abandoned, but said that the files could not be destroyed without an act of Congress. It was not until 1939 that filing functions were revived as a way to implement Hoover's newly acquired responsibilities. But if the September 1939 delegation did not normalize intelligence collection, whence comes the authority to maintain political intelligence files? We must look elsewhere for such authority which, given the profound effect of the bureau's huge filing system, its influence both on its subjects and as the model for all domestic intelligence operations, one would expect to be clearly stated and rigidly limited in scope, accessibility and duration. But it turns out that the Congressional warrant for filing is as dubious as the Presidential directive for surveillance.

The present law which assertedly authorizes intelligence filing deals with "identification records" and authorizes the Attorney General to acquire, preserve, and exchange with other governmental units (federal and local) only "identification, criminal identification, crime and other records." That last vague phrase is cited as the statutory support for the bureau's entire filing apparatus. True, Executive Orders dealing with federal employment assume or recognize the existence of political files, but that is a far cry from an authorization to compile them in the first place.

The current legislation is mainly a codified version of a law passed in 1930. When the Judiciary Committee in January 1930, reported the proposed legislation to Congress it appended the phrase "other records" with this explanation: "There are two classes of information. One is criminal records, and another is the information that is gathered about criminals that is not a matter of record. These they do not give out, but the criminal records they do give out." In view of this explanation, Congressman LaGuardia proposed that the committee amendment be enlarged to read "and other criminal records"; the amend-



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ment was accepted by the committee and passed with the restrictive language. When the law was codified in 1966, the original narrow language was, in the process of statutory housecleaning, expanded by excision of the term "criminal," but the codifiers made it clear that no substantive change was intended. This view was endorsed in a 1971 federal court decision by Judge Gerhard Gesell in the case of *Menard* v. *Mitchell* when he ruled that, "The statute read as a whole is obviously designed to facilitate . . . law-enforcement activities . . . to assist . . . in the apprehension, conviction and proper disposition of criminal offenders."

During his Department of Justice apprenticeship, a period of traumatic response to the Russian Revolution, Hoover had helped shape and exploit the most powerful myth in American life; that the country was under the permanent threat of a terrible fate—communism, revolution, subversion ("the menace"). Through this myth Hoover helped to give anti-communism an iron hold on the popular imagination. The American society, as the late Jules Henry, author of *Culture Against Man*, once reminded us, is programmed for fear. For better than thirty years, Hoover exploited this fear for the purpose of entrenching the FBI as an intelligence agency, insuring a constant stream of generous appropriations and buttressing his personal power with a huge anti-radical constituency for whom he was the only protection against bloody revolution.

Hoover's post-World War I experience had not only taught him the power of anti-communism as a social myth but the most efficient way to exploit it. In the years 1920-21, when Atty. Gen. A. Mitchell Palmer's abuses fell under attack, his prime defense was the claimed approval of the people, the media and the Congress. Hoover learned from Palmer a great deal about the uses of propaganda and in fact helped prepare his defense both in the media and on the Hill. In the early 1920s, the bureau's exploitation of the media drew the protests of prominent lawyers that the agency was trying its cases in the press. By 1924 this had become a major grievance and in an interview in August of that year, Acting Director Hoover and Attorney General Stone promised Roger Baldwin of the ACLU that in future only the Attorney General would speak for the bureau and that the new Director would stick to his bureaucratic labors. When he launched his subsequent Red-hunting operation, Hoover understood that his greatest protection was the systematic development of a mass and a Congressional base. Forgetting his earlier promise, he was ready to make a speech or write an article at the drop of a hat and soon became a star attraction of the convention and graduation circuit, as well as of the periodical press. From 1940 until shortly before his death, Hoover's output of speeches, articles, interviews and pamphlets on the Red menace alone was prodigious. Although the bureau's crime-fighting responsibilities are far more important than its intelligence role, Hoover's muse was primarily stirred by subversion. And communism was a more appealing subject than, say, Mafiosi. Of the four books that appeared under his signature (all ghost-written), only the first, *Persons in Hiding*, a dud, dealt with crime.

Radical-watching was much more congenial to the Director's temperament and background than police work and gave greater scope to his ambition and ego needs. In American police practice, even on the urban level, the intelligence functionary typically enjoys more prominence, public recognition and freedom from supervision than do his counterparts in other police specialties. Quite simply, who would want to be the nation's chief cop when he could become its minister of internal security with unlimited power, an opportunity to build a mass base and thereby become a national hero? Hoover's one-sided concentration on internal security and neglect of crime detection produced an institutional tilt of the entire bureau toward anti-subversion.

From the mid-1940s on, the bureau's internal security function, not the detection of crime, became the Director's key to success. It permitted the bureau to bypass the Civil Service when hiring personnel, to adopt its own rather unorthodox budgetary procedures. Indeed, the Director's evolving role as a nation savior enabled him to obscure his limited achievements in the more prosaic field of law enforcement, and led to the ultimate absurdity of including no less than six student radicals on the bureau's "Ten Most Wanted" list. The extraordinary importance Hoover attached to this aspect of the bureau's operations can best be appreciated by his ambivalence toward the question of jurisdiction.

As demonstrated above, Hoover fabricated the bureau's internal security jurisdiction out of the most unpromising materials, but when it came to criminal matters he was most scrupulous. Pressed to enter a case which was distasteful to him, he would deliver a lecture about the dangers of a "national police force" with a "roving commission." And this sinister eventuality would surely come about if the bureau did not rigidly confine itself to the specific jurisdiction delegated to it by Congress. Indeed, this seeming self-restraint became a badge of merit, proof of how groundless were the charges that he was a dangerous power seeker. The Director was never very enthusiastic about the areas of organized crime or civil rights. According to a study by an admirer, Ralph de Toledano, he long resisted pleas to enter the field of organized crime on jurisdictional grounds. When these objections were overcome during the Attorney Generalship of Robert F. Kennedy, he refused to take on the syndicates, warning that "to make the attempt would expose the FBI to all the temptations of corruption and big money, returning it to its sorry state under the Wilson and Harding administrations." In the field of civil rights and police malfeasance he also justified his foot-dragging on jurisdictional grounds, adding private explanations that he was "one of those states' righters."

## The FBI Overseas

Meanwhile, the Director fought to retain and expand jurisdiction over intelligence. To begin with, the bureau's domestic counterintelligence jurisdiction rests on a foundation every bit as infirm as its intelligence mandate. During World War II Hoover acquired a foreign assignment (Latin America) which was implemented by a bureau unit, Secret Intelligence Service (SIS). In the fall of 1944 Gen. William J. Donovan submitted a secret memorandum proposing a permanent American foreign



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Graham, Arkansas Gazette (Little Rock)

*"Don't People Realize You Just Do Not Retire an 'Institution'?"*

intelligence service based on the OSS and reporting directly to the President. This memorandum became the center of a political storm when it was leaked to the press by the Director. The *Chicago Tribune*, one of Hoover's favorite press outlets, acquired a copy of the top-secret document and printed a series of articles by Hoover's ally, Walter Trohan, denouncing Donovan's plan as a "superspy system." This maneuver succeeded in killing the proposal only temporarily but Hoover continued to fight incursions on his jurisdiction in Latin America for as long as he could. According to a recent account, when the transition came, "in some American embassies south of the border, FBI men destroyed their intelligence files rather than bequeath them to their CIA rivals. The first years of CIA's existence also saw Hoover busily promoting charges that a sinister Communist spy network had subverted OSS."

But these rebuffs never discouraged Hoover's campaign to expand his intelligence empire. Initially a small corps of agents operated through foreign embassies as "legal attachés" and concentrated on law enforcement—principally the apprehension of fugitives. In 1970 Hoover demanded and received authorization to put the FBI in more than twenty-five foreign capitals. In addition to their formal assignment to apprehend fugitives, they were authorized to collect intelligence and to transmit reports back to Hoover for the ultimate use of the White House.

In 1971 Hoover proposed expanding his network into another dozen capitals. President Nixon agreed, despite the fact that the post-World War II Delimitations Agreement of government agencies involved in intelligence work forbade the step. This enlarged network, strongly opposed by both the State Department and the CIA, was wholly intelligence-oriented and transmitted reports in code which Hoover routed directly to the White House without coordinating with either the CIA or the State Department. According to insiders, the intelligence that was sent was worthless, but Hoover was eager to expand the bureau's foreign intelligence jurisdiction, and at the same time curry favor with the Administration by ascribing domestic unrest to a foreign-based plot, and to upstage the CIA with which the FBI had ended its liaison in May of 1970.

On can only wonder what dreams of power, what drives for dominance, and what fears of rival authority led the aged Director (then 76) to claim a grossly exaggerated importance in the foreign intelligence field and then seek to usurp the operational jurisdiction of other agencies by expanding his already useless and unproductive network of agents abroad.

## Post-Mortem on a Legend

With the death of the Director, after almost a half century of virtually absolute and uncontrolled bureaucratic rule, the time seemed ripe for a close examination of key questions: political surveillance jurisdiction; the past record of the Justice Department as the bureau's parent agency, and the desirability or necessity of legislative oversight. A number of converging circumstances had made the long-overdue inquiry timely. With the passing of the Director, would-be Congressional critics were much less afraid of reprisal. More than a year before his death, in the winter and spring of 1971, waves of criticism had begun rolling in, beginning with Hoover's Congressional testimony on the Berrigan case in November 1970. This was followed by his disciplinary transfer of an agent (John F. Shaw) who criticized the bureau and by a ban on future involvement by bureau agents in the college program which gave rise to the criticism. Senator McGovern attacked Hoover when he smeared a TWA pilot who had criticized the bureau's handling of a hijacking, and when he discharged three bureau clerks for envelope-stuffing in a peace group. In March the files in the bureau's Media, Pa. office were stolen and publicized, much to the agency's chagrin (the culprits were never caught). Highly important was a one-hour speech on April 22, 1971 by House Majority Leader Hale Boggs, the most significant attack on the bureau in its entire history. In addition, a large number of law-enforcement professionals had become disenchanted with the agency's stodginess, bureaucracy and resistance to new methods.

Authorization for a thorough examination of the FBI would not, in the normal course, have been easy to obtain. The bureau had escaped a legislative accounting for half a century. The House Appropriations Subcommittee under Congressman Rooney was hardly likely to serve as an investigative instrument. Nor, given the Director's devoted following, was either the House or Senate inclined to launch a probe through its judiciary committees. But there was one opening: the 1968 Omnibus Crime Bill specifically provided that future nominees to the post of FBI Director had to be approved by the Senate.

After serving as Acting Director from May 4, 1972 to February 1973, L. Patrick Gray 3rd was nominated to the post by the President, an appointment which drew



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a damp response even from Administration supporters. Gray had no law-enforcement experience and had obviously been chosen as a reward for his enthusiastic political support of the President. In fact during his stint as Acting Director he had exploited the prestige of the bureau by making political speeches at the request of the White House, a form of partisanship which became a principal source of objection to Gray's nomination.

The committee determined to use the hearing to explore the bureau's intelligence jurisdiction. It was hardly necessary to force open any doors to get into this subject, since at the beginning of the hearing Gray told the panel that, in his first weekend in office, he had isolated a series of key problems facing the bureau and assigned them for intensive research and reports by senior bureau officials. He later distilled these topics into thirteen "Avenues of Inquiry."

The first of the research assignments was organized crime. The second centered on the bureau's intelligence jurisdiction:

> (*2*) Subversion (Specifically include in this paper a detailed analysis and justification for our current policy with regard to the investigation of individuals where there has been no specific violation of federal law. Is additional legislation needed in this area?).

But having commissioned a paper on the subject by a bureau expert, Gray made a speech at the Fourth Annual Crime Control Conference—"Challenges that We Face Today"—which indicated that, whatever might be his private concern with the intelligence jurisdiction of the agency, he was continuing business at the same old stand. Gray told his listeners that the FBI, "under Executive Directives" and laws of Congress, "will continue to investigate acts by individuals and organizations that threaten the security of the nation and the rights and freedoms of American citizens. This is an area which I expect to draw the heaviest salvos of protest and complaint because those who would alter drastically our form of government must . . . and will . . . remain vehemently opposed to the work of the FBI on behalf of all of the American people." Thus the Acting Director on the one hand recognized that the bureau's jurisdiction over subversion needed examination and on the other castigated as subversive those who did the questioning.

During his confirmation hearings, Gray was pressed for a statement detailing the sources of the bureau's authority for internal security surveillance. In response, he submitted a document which cites some twenty-two laws claimed to authorize "intelligence-type national security investigations. . . ." The document submitted does not appear to be the report Gray had commissioned but rather a summary of it. Not only does this document avoid reliance on Presidential directives—a rather surprising de-emphasis in view of the bureau's repeated insistence on these directives as *the* source of its internal security jurisdiction—but it claims to justify intelligence activities as an instrument of law enforcement. Six of the cited laws deal with matters (espionage, propaganda, atomic secrets, for example) upon which foreign "intelligence-type" investigations are allegedly based and the remaining sixteen with domestic political crime. But for more than thirty years the bureau had insisted that it wore two separate and quite different hats: a general investigative hat for probing violations of law and an internal security hat. In contrast to its general investigative activities, the internal security work, manning the very ramparts of the Republic, had to be hush-hush and, the story ran, could not be measured by such workaday yardsticks as arrests and convictions. Now (in 1973) the Senate committee is told that there is only one source for the bureau's internal security claim: the authority conferred on the bureau on a piecemeal basis to obtain evidence of violation of particular laws that had been passed by Congress over the years and involved speech or conduct political in content or motivation.

As I will show in greater detail later, there are serious functional objections to such a combination of political intelligence and law enforcement. Here it need only be pointed out that the laws cited by Gray punish conduct of a particular kind—sabotage, espionage, violations of neutrality, creating disaffection in the armed services, using explosives, inciting riot. It is one thing to argue that the bureau has the power, and indeed the duty, to keep track of and investigate individuals who are actively suspected of plotting such crimes; it is quite another to contend that its responsibilities justify free-floating surveillance of subjects and the compilation of dossiers in the absence of some proximate linkage to such crimes.

## Gray's House of Cards

Under the Gray formulation, surveillance of an unfocused sweeping variety is justified simply by the fact that a statute might conceivably be violated by a subject at some time in the future. All forms of leftism or radicalism became appropriate targets of such surveillance because their adherents are seen as embryonic spies and saboteurs who might eventually pose a threat to the security of the nation—an intolerable risk. This is the classic justification for a police state.

When the protected freedoms are involved, a democratic state must stay its hand for a *longer* time than in the case of injury to persons or property. We cannot observe the presumption of innocence for burglary suspects and reverse it for dissenters. Then too, it will be recalled that the bureau's general investigative jurisdiction is a function of its arrest power and could hardly serve to justify probes which have no arrests in view. In the absence of real smoke, one cannot plausibly cry "fire" just because the *possibility* of smoke is so abundant. It must also be emphasized that the claim that dissenters are potential revolutionaries inevitably leads to a distortion of their politics on the one hand and to an exaggeration of the government's vulnerability on the other. Moreover, this prevention rationale chokes the files of the agency with the dossiers of millions of people who cannot be even suspected of law violations. The resulting two-tier system of justice imposes hidden sanctions on dissidents for behavior not punishable by law.

Quite apart from the serious dangers posed by reliance on a law-enforcement justification for political surveillance, another difficulty arises: few of the statutes cited by Gray can be plausibly invoked in support of ongoing people-watching. The laws dealing with such matters as



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espionage, sabotage, inciting disaffection in the military or conducting "private correspondence with the enemy" (the Logan Act) are too rarely invoked in peacetime to justify institutionalized mass surveillance. Indeed the Logan Act has never been enforced. Of all the sixteen laws in this area, only two could, on the face of it, be applied to more than a minuscule number of targets: the Smith Act of 1940, which makes it a crime to teach and advocate the violent overthrow of the government, and the Internal Security Act of 1950, Title I of which provides for the registration of subversive individuals and organizations.

But a Supreme Court decision in 1961 brought an end to attempts to enforce the Smith Act, which was already riddled by a number of successful constitutional challenges. And enforcement of the Internal Security Act requiring registration of "Communist-infiltrated" and "Communist-front" organizations had been ended in the 1950s, and the membership registration provisions suffered the same fate in the following decade. By the 1970s the agency charged with administering the law, the Subversive Activities Control Board (SACB), had been blocked for years from functioning by judicial attacks on the constitutionality of various provisions. The Nixon Administration tried to give the SACB something to do. On July 2, 1971 it promulgated Executive Order #11605, which purported to amend an Executive Order issued by President Eisenhower (Executive Order #10450, April 27, 1953), which had established loyalty and security requirements for federal employment. In turn, the Eisenhower order had replaced and revoked a federal employment applicant's screening Executive Order #9835, issued on March 21, 1947. These three successive orders were also cited by Gray rather ambiguously as a source of "investigative responsibilities relating to the national security." But even in this limited area the bureau's functions have been sharply cut over the past decade by a course of Supreme Court decisions invalidating or limiting political qualifications for government employment and for employment in defense industries.

The Nixon order purported to amend the Eisenhower document by more broadly defining the classes of organization whose members could be barred from federal employment. The moribund SACB was given the task of advising the Attorney General whether a particular organization was subversive within the meaning of the order's enlarged standards. The "Attorney General's list" of subversive organizations had been authorized by the Truman and Eisenhower orders, but it too had been eroded by constitutional attack. A Supreme Court decision in 1951 had required notice and hearing before an organization was listed. The Nixon order was intended to meet the Supreme Court's objections to unilateral listing by giving the SACB responsibility for conducting hearings to determine whether an organization should be listed, and thus rescue the agency from total idleness.

At the same time, the order was intended to give a new lease on life to the languishing Internal Security Division of the Department of Justice, once kept busy preparing "front," "infiltration" and "membership" charges for presentation to the SACB. In turn, the FBI would be empowered under the order to investigate potential listees (organizational and individual) in order to develop data for processing by the ISD.

Executive Order #11605 was really a master stroke; but it had one weakness. It contemplated revising or amending the Internal Security Act, clothing the SACB with powers not hitherto granted by Congress, and the President has no power to legislate. For this reason the order was killed by Congress by an appropriation rider in October 1972. The SACB was abolished on March 27, 1973 merely by dropping it from the budget. This left the ISD with no important function and it too was abolished at the same time—by a simple order of the Attorney General. The Gray bureau was left with its former investigative responsibilities in the area of government employment under the Eisenhower order, hardly a promising source of broad investigative authority.

It is quite clear that Gray, enlightened by the special study he had commissioned, abandoned FDR's September 6th directive in favor of investigative responsibilities in the criminal field. But escape from the Charybdis of executive statements and orders, stale and limited in scope, brought collision with the Scylla of investigating possible violations of laws by individuals or groups, not as real suspects but simply because of their political unpopularity. The very ground to which the bureau had shifted had already been condemned as unconstitutional in a long series of court decisions. It was a replay of 1919-24, when intelligence gathering had been justified on the basis of anticipated legislation that was never enacted. The bureau today relies on legislation passed, but either dormant or judicially invalidated. In both cases law enforcement served as a cover for a pervasive intelligence system unrelated to its claimed purpose.

## Kelley, the Old Hand

When Gray's rejection by Congress seemed inevitable, a new nominee, Clarence M. Kelley, appeared before the Judiciary Committee. By this time, June 1973, the Senatorial panel had developed greater clarity and precision in isolating the jurisdictional problems which had emerged with the death of the Director. In response to questioning concerning the source of the bureau's internal security intelligence jurisdiction, Kelley, former chief of the Kansas City police, relied on his twenty-one years of service (1940-61) as a bureau agent. Quizzed by Senator Byrd ("Do you feel, Mr. Kelley, that the September 6, 1939 Executive Order is the source of the FBI's jurisdiction in intelligence matters?"), the witness replied: "I would not term it as the source of the authority, but an articulation of it as interpreted by the President and as expressed by the Director flowing originally from the Constitution, yes. . . ."

Gray, relying on prior study but with no bureau experience, had argued that the bureau's jurisdiction to engage in intelligence collection stemmed primarily from its law-enforcement responsibilities. But Kelley, a twenty-year bureau veteran, returned to the traditional view that the agency had an intelligence mission altogether independent of its criminal investigative responsibilities, and rooted in the inherent power of the President.

After his confirmation in July 1973, Kelley began to overhaul the bureau in consultation with Elliot Richard-



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*Clarence M. Kelley*

son, the newly appointed attorney general, and William Ruckelshaus, his deputy, who had himself just completed three months as Acting FBI Director. In confirmation testimony, Kelley seemed receptive to proposed changes; Richardson and Ruckelshaus had some definite notions about the need for change. They worked out, in agreement with Kelley, an agenda for discussion consisting of eleven issues. They were in some respects similar to those "avenues of inquiry" Gray had pinpointed but with far greater emphasis on surveillance and intelligence.

Indeed, even before the agreement on this agenda, Richardson let it be known that he was reviewing with Kelley the basis for the bureau's intelligence functions, and Ruckelshaus in his confirmation hearings on September 13, 1973, said that he had an open mind about separating the intelligence gathering from the law-enforcement functions of the FBI. But before further action could be taken, Richardson resigned and Ruckelshaus was fired in the "Saturday night massacre." Just as Gray's internal inquiry into the source of the bureau's intelligence authority failed to reduce his hostility to external critics, so Kelley's initial receptivity dissolved almost overnight. In both cases the more the need for change was acknowledged privately, the more things remained the same publicly. Just two weeks after Richardson and Ruckelshaus had departed, Kelley gave the back of his hand to the bureau's internal security critics. In a speech on November 4, he presented an emollient version of the we-must-get-them-before-they-get-us formula, highlighted by the following:

> On occasions we hear complaints that the FBI has investigated people who have merely been involved in nonviolent, peaceful demonstrations. . . . Experience, however has taught that all too often violence-prone subversive groups attempt to exploit the activities of these legitimate organizations . . . the legitimate group is infiltrated, if not completely taken over by extremists. Adherents of the original and worthy group simply drop out. The extremists, those persons who do not respect the law and refuse to accept restraints, become dominant. Within the group a transition has occurred from a peaceful and lawful posture to one of potential or actual violence.

The thesis of the innocent dupe victimized by the infiltrating agitator has been for more than two decades the standard justification for systematic surveillance of legitimate movements for change in this country. What lessons from experience did the Director have in mind? What are his qualifications for interpreting our political past? Who are these violence-prone Typhoid Marys who spread their infection through the entire spectrum of dissent? Does the bureau now gauge the predictability of violence with instruments more sensitive than those that were used from the late 1940s to the present with such devastating impact on the protected freedoms?

Kelley dealt elsewhere with the question of FBI jurisdiction over internal security. In the March 1974 issue of the FBI Law Enforcement Bulletin he asserts that this "investigative obligation" is "based on specific statutes and directives," but what they are he does not say. In his November 4th speech Kelley had presented the approved standard version of the bureau's intelligence jurisdiction: legislative authority flowing from specific enactments and "Presidential Directives dating from 1939. . . ." When the bureau's annual report was released on December 14, 1973, we were again told of the bureau's dual investigative functions (gathering evidence for prosecution and "intelligence type data"). But the "Presidential Directive" authority, relied on six weeks earlier, had mysteriously vanished. Now, in addition to legislative enactments, we were referred only to unspecified "instructions from the Attorney General." But the only recorded relevant instructions from the Attorney General simply transmit to the bureau the responsibility for executing the directives and add nothing to them. In any event, it would be ludicrous to argue that an attorney general could on his own authorize a political police operation.

After considerable waffling, Director Kelley finally came to rest on law enforcement *cum* prevention as the answer to the source of internal security jurisdiction. The Director reminds us in his March article that the bureau's intervention in internal security cases must necessarily be prophylactic and anticipatory. "Unlike certain crimes against persons and property, the consequences of a violation concerned with the nation's welfare are too grave to wait for the offense to occur before taking action. It is an inescapable fact that this nation houses persons who seek to disrupt the orderly processes of the law, persons who would willingly use violence to achieve their goals, and still others who would foment anarchy. Indeed, there are those who would even subvert the country for profit or by misguided zeal. We are determined that they shall not succeed." And who are these disrupters, fomenters of anarchy, subverters for profit and misguided zealots? We are somewhat enlightened by a speech of



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November 29, 1973, in which Kelley abandons his earlier concessions to the need for a new look at intelligence. He warns: "We must gather intelligence-type information, for example about groups and individuals who may outwardly appear innocuous and law-abiding but who are liable to undertake serious acts of violence as part of an effort to interfere with or destroy our democratic form of Government." Who identifies these folk hiding their nefarious designs behind a mask of innocence? Why the bureau, of course. And how will the admitted abuses of the past be overcome? We have the Director's word that under his direction the bureau will always accord the highest priority to "the rights of the individual." Besides, the bureau is accountable to the public, the President, the Congress (a Senate oversight panel, a subcommittee of the Judiciary Committee, was formed early this year) and the Attorney General.

For those who have studied the bureau's history under Hoover, the promised freer access of the public and press is far from cheering: it is a seemingly benign, "democratic" way of institutionalizing propaganda to justify operational abuses. And how effectively could an oversight committee deal with secret usurpations of power? Legislative oversight of the CIA has been a total failure. What would happen if a bad President, Attorney General and Director were all functioning at the same time? Kelley insists that this could never happen because, "I seriously doubt there will ever be another director who has not had a background in the bureau. And a man who has that kind of training would not let that sort of thing happen." This is a dusty answer indeed: what is there about bureau training on the subject of internal security to reassure us? More important, if the democratic idea means anything, it surely means that we do not entrust to policemen the power to fix the point at which the state may intervene to monitor political expression and association.

## Surveillance vs. Enforcement

Director Kelley has taken note of another problem. A "strident handful of critics [including, it may be noted, Ruckelshaus] has urged that perhaps our nation would be better served if responsibility for internal security was amputated from the Federal Bureau of Investigation." It is a "groundless and specious" charge. After all, the Congress (through its appropriations power, approval of the appointment of the Director and an oversight committee), the Attorney General and the courts are adequate checks on possible abuses arising out of the institutional wedding of law enforcement and political intelligence gathering. Director Kelley also insists that, contrary to most views (including the writer's), the two types of investigation are related and are on occasion mutually supporting. He argues that "when internal security is placed in [a] broad operating context" it would be policed with greater moderation and more openly than would be the case with an independent agency operating under a specialized mandate. Here, too, there is nothing in the bureau's past record which would justify a claim of either balance or openness. And the objections to this merger of functions—to which I now turn—are far more substantial than Director Kelley has suggested.

Political intelligence operations and law enforcement are quite distinct responsibilities. In England the Security Service (MI 5) is the defensive intelligence unit whose responsibilities cover both foreign-inspired espionage (counterespionage) and threats to the country's safety. The investigation of political offenses is the separate responsibility of Scotland Yard's Special Branch, a law-enforcement unit whose members are recruited and specially trained for this work.

The reasons why modern states typically keep political law enforcement functionally separate from intelligence collection are clear. The objectives of the two are different (often in conflict). Modern domestic peacetime political intelligence systems are the offspring of military and foreign relations practices designed to collect information about the military and diplomatic plans of foreign states and to frustrate similar efforts by such states. The "target" is considered an enemy, actual or potential, to be dealt with, in war or peacetime, by any means. When these intelligence operations are adapted for domestic use, they retain their disregard for legal norms, even though the targets are now the country's own nationals. In the case of the United States, this is demonstrated by the Cointelpros to be discussed below.

Today the domestic child is beginning to outstrip its foreign parents: the role of traditional intelligence in modern societies has, on the one hand, become widely discredited by scandals and, on the other, altered by technology—space satellites, photography, computerized evaluation, electronic resources and greater reliance on overt sources. But domestic intelligence—especially in the United States—retains a strong cloak-and-dagger emphasis. Such practices are of course in total conflict with law-enforcement procedures; in fact, it was because law enforcement itself became an intelligence "option" in recent years that the government suffered so many courtroom setbacks. In the same vein, political intelligence is not nearly as result-oriented as is collecting evidence for prosecution; the intelligence operation is shaped by the assumption that by collecting seemingly innocuous data one may ultimately unlock the meaning of yet undiscovered facts.

In addition, law enforcement strives for arrests just as soon as the necessary evidence of criminal responsibility is available. The intelligence objective, on the other hand, is to forestall any damage to state interests and, at the same time, to accumulate as much information as possible about the suspects, their confederates and sponsors. Arrests may frighten away the higher-ups. Besides, an intelligence service may find it more useful to permit a spy to remain at large in order to feed him false information or induce him to transfer his allegiance. An intelligence agency such as MI 5 does not even have arrest powers. Law enforcement must have witnesses, a role which ends the spy's career. Indeed, the paucity of indictments for political offenses in this country has been ascribed to the Director's unwillingness to uncover his spies.

In this country not only is the intelligence service combined with criminal investigation, but for three decades this merged operation has been publicly exploited to promote the name and fame of its publicity-hungry Director. But given our arsenal of laws to protect the nation against every conceivable variety of political offense, is there



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any need at all for a domestic internal security jurisdiction? It must be recalled that from 1924 to 1939 no such federal authority existed. The heavens did not fall. And if such a function is activated should it not be a Congressional and not an Executive responsibility? A potential restraint on domestic political activity or association ought to be the special concern of the Congress. Even foreign intelligence collection, though closely associated with Presidential war and foreign policy power, is the subject of Congressional enactment.

Beyond the objections already discussed, combining law enforcement and political intelligence raises serious conflict of interest problems. If a Congressman or a Senator or a judge commits a crime, we expect the bureau to develop evidence of the offense and the Department of Justice to prosecute. But in the case of the Executive, the bureau is deeply compromised from the start. In purely functional terms, a shared involvement in internal security and related matters (such as background checks of Executive appointees) forges an unacceptably close bond between the White House and the bureau. So it was that Gray not only destroyed vital evidence at the request of the White House but even seems to have deliberately concealed from the Senate confirmation panel (thus risking perjury) the facts about how and when he came to learn of the Kissinger taps.

Nor can we ignore the impact of such a blending of functions on freedom of dissent, since it enables the intelligence chief to justify harassment of domestic targets by claiming or suggesting that they are really agents of a foreign power; defensive counterintelligence thus serves as a pretext for surveillance of domestic targets. The "broad operating context" does not, as Director Kelley argues, moderate the scope and impact of surveillance; on the contrary, it creates a false justification for it. Like every spy master, at least since Walsingham, Hoover justified his oppression of dissent by equating it with a foreign-based conspiracy. This identification was also an effective shield against critics: it was downright traitorous to object to what was in reality a counterintelligence operation purely defensive in character.

We have come full circle. As it was in the beginning, so today. The bureau's intelligence investigations are as unauthorized and unsupported in law as were those of 1919-24. Neither Presidential directives, instructions by the Attorney General, conventional criminal investigations, nor Executive Orders warrant an ongoing, free-floating power to probe the politics of Americans. Law enforcement cannot justify an ongoing intelligence mission. The concept of a "threat to internal security" simply reimports into the bureau a nonexistent authorization to engage in political intelligence unrelated to law enforcement. It adds to the illegality of the operation the additional taint of deception.

There is no evidence at all that the newly substituted justification of criminal investigation has altered or reduced the scope of the bureau's political mission, or that the bureau is ready to undertake the dismantling of its enormous structure of files and dossiers compiled under the warrant of "subversive activities." Nor is this fuzzy subject matter (subversive activities) legitimized by a switch to a justification based upon Congressional rather than Executive power. Suppose Congress had passed a statute authorizing the bureau to investigate "subversive activities" in order to protect internal security. Suppose further that the statute contained no definition or description of what was meant by this term or what kinds of targets the bureau was authorized to investigate, leaving such decisions to the Director. Such a measure would be unconstitutional on its face—both because it provides no meaningful standards to guide its enforcement and because of the intimidating impact of its broad language, its "chilling effect" on the exercise of basic rights of speech, press and assembly.

## 'Missions' and 'Targets'

The illegitimacy of the bureau's intelligence authority is characteristic of virtually all domestic police agencies engaged in such work—especially when their targets are American nationals. This seemingly inherent ambiguity is a way of indulging our fears without overtly compromising our principles. And once such a function is activated, its secrecy and claimed identification with important interests frustrate efforts to probe its legitimacy or curb its excesses. But in the case of the bureau, we have learned a great deal about its mission, range of targets, priorities and tactics. We can also readily test the validity of its law-enforcement justification from verified operational patterns. In addition, such patterns will tell us most plainly how broadly the Director interpreted and applied the bureau's claimed mandate.

The primary intelligence target is communism; it is also the standard by which the bureau measures the subversive character of other targets. This "old Left" category includes the Communist Party U.S.A. (CPUSA), the Trotskyist Socialist Workers Party (SWP), the Progressive Labor Party (P.L.), the Revolutionary Union (R.U.) and other sects, committees, leagues which espouse a revolutionary goal and base themselves on Marxist models: Soviet, Maoist or "Third World."

The Communist Party is the highest bureau intelligence priority by virtue of its links with the Soviet Union and its identification with the Russian Revolution. Its continued importance is dictated by the ease with which surveillance can be linked to "foreign intelligence," the only remaining area in which warrantless wiretapping is not forbidden. The FBI's bureaucratic rigidity slowed up its reaction to other revolutionary groups, rivals of the Communists, which in the 1960s emerged on the political scene. In time, the bureau closed the gap, the adjustment being reflected in the establishment of an "old Left desk."

Surveillance of the organizations in the belatedly expanded old Left category is self-justifying, regardless of their size, capacity to bring about a revolution now or in the indefinite future, or other indicators of powerlessness. In the same way, the group's commitment to nonviolent methods for achieving its ultimate goals, the constitutionally protected character of its day-to-day activities, or a preference for theory over practice never serve to shield it from surveillance. A connection with such a target group, no matter how tenuous in character or remote in time, *ipso facto* qualifies a subject for surveillance. Marxist groups are typically monitored more thoroughly than are other targets: more infiltrators, deep-penetration agents



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"in place" for many years, wiretapping. In addition to covert surveillance, various overt forms of surveillance are routine: physical supervision, interrogation of third parties (landlords, bank managers, neighbors, employers, teachers), photography, tape recording, etc.

Nor is American intelligence practice against the Marxist Left purely passive; it is also intended to intimidate and demoralize the target. The bureau's intelligence collection in this area is guided by ideology rather than by professional considerations; there is no need to learn what the target is up to—that is assumed. Informers in the old Left are not encouraged to report back to the bureau matters of substance or discussions on internal matters. The great stress is on reporting names of members and participants.

The impulse to confront and to punish the target is hard to control; the hostility which motivates surveillance inevitably turns it into harassment. But beyond this kind of aggression, essentially a form of psychological warfare by which the bureau hopes to frighten the target into retreat, surrender, or "cooperation," one finds clear proof of deliberate disruption.

On July 18, 1973, the SWP and its affiliate, the Young Socialist Alliance (YSA) filed a lawsuit alleging violations of party members' constitutional rights, including intensive interrogation, employment discrimination, wiretapping and burglary of offices. The defendants included the Attorney General, various department heads, President Nixon and several of his former aides. The government, on January 7, 1974, filed a response that was extraordinarily frank in several respects. It admitted "that during the period 1961-69 the FBI conducted a program denominated 'SWP Disruption Program' whose basic purpose was to alert the public to the fact that SWP is not just another Socialist group but follows the revolutionary principles of Marx, Lenin and Engels as interpreted by Leon Trotsky, and further states that at various times during the period 1945-63 the FBI conducted limited national security electronic surveillance of certain plaintiffs. . . ."

The Socialist Workers Party's "disruption program" was launched by a Director's memorandum dated October 12, 1961, which outlined the need for such a step in these terms: "the . . . SWP . . . has, over the past several years, been openly espousing its line on a local and national basis through running candidates for public office and strongly directing and/or supporting such causes as Castro's Cuba and integration problems arising in the South. The SWP has also been in frequent contact with international Trotskyite groups stopping short of open and direct contact with these groups. The Youth Group of the SWP has also been operating on this basis in connection with SWP policies."

The Director then explains that the bureau is not interested in a one-shot "crash program" but in a long-term effort: "only carefully thought-out operations with the widest possible effect and benefit to the nation should be submitted. It may be desirable to expand these programs after the effects have been evaluated." This directive indicates that it is not a commitment to violence or a threat of violence that triggers the selection of a surveillance or provocation target, but ideology. Here, the SWP is pinpointed *because* it has embraced the electoral process.

The government also acknowledged in its answer that one wiretap had been placed in 1972 on the Los Angeles home phone of James P. Cannon, then the group's national chairman, adding "that the discovery of a wiretap . . . was reported to the FBI by the Los Angeles Police Department." The complaint charged that the Detroit headquarters of the SWP had been burglarized in October 1971 and that lists of supporters of the group, as well as of distributors and subscribers to the SWP organ, had been removed. The government's answer did not deny bureau complicity in the break-in, but cryptically confined its response (as in the Los Angeles wiretap) to an admission "that the FBI had knowledge of a report made by the Detroit Police Department concerning the alleged burglary."

Another striking and more candid response was the admission of the accuracy of the charge in the complaint that mail addressed to the SWP, its offices, members and supporters had been screened to obtain senders' names and return addresses. But the government insisted that this "mail cover" was lawful. What made it lawful? When the plaintiffs' lawyer pursued the matter they were proffered a letter dated January 11, 1973 from L. Patrick Gray 3rd, Acting FBI Director, to the postal service in Washington, requesting that "confidential arrangements be made" through the Post Office to institute a mail cover on the national headquarters of the Socialist Workers Party "for a period of 120 days."

A wholly unsupported claim that this minuscule group endangered the national security was sufficient to justify the intrusion. It should be noted that, in his letter to the Post Office, the Acting Director also referred to Executive Order #10450. He apparently thought that the fact that the SWP had been listed by the Attorney General somehow gave the bureau *carte blanche* to monitor its mail. But if the organization was already on the list, what purpose would be served by further surveillance? Did the bureau perhaps contemplate developing evidence to indicate that it should be removed from the list?

## 'Expose, Disrupt and Neutralize'

There is also documentary proof of a program of provocation against the New Left. The impact of the New Left on the politics of dissent was, though transient, notably dramatic and, at its height, seemed to pose a far greater threat to the *status quo* than did the old Left. But anticommunism was the rock on which Hoover built his church. He could not alter his conviction that the old Left, however enfeebled, was the bureau's top intelligence priority.

It is therefore not surprising that the major initiatives for New Left surveillance originated in Division 5—the Domestic Intelligence Division. The two officials responsible for the program were Asst. Director William C. Sullivan, in charge of Division 5, who was forced out of the bureau in the fall of 1971 because of differences with the Director over intelligence priorities, and Charles D. Brennan, the chief of Division 5, who succeeded Sullivan as assistant director.

A memo dated May 9, 1968, prepared by two members of Division 5 and transmitted by Brennan to Sullivan recommends a "Counterintelligence Program":



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> Our nation is undergoing an era of disruption and violence caused to a large extent by various individuals generally connected with the New Left. Some of these activists urge revolution in America and call for the defeat of the United States in Vietnam. They continually and falsely allege police brutality and do not hesitate to utilize unlawful acts to further their so-called causes. The New Left has on many occasions viciously and scurrilously [sic] attacked the Director and the Bureau in an attempt to hamper our investigation of it and to drive us off the college campuses. With this in mind, it is our recommendation that a new Counterintelligence Program be designed to neutralize the New Left and the Key Activists. The Key Activists are those individuals who are the moving forces behind the New Left and on whom we have intensified our investigations.
>
> The purpose of this program is to expose, disrupt and otherwise neutralize the activities of this group and persons connected with it. It is hoped that with this new program their violent and illegal activities may be reduced if not curtailed.

An approving memorandum was transmitted in the Director's name the next day.

This program, the memorandum states, is not intended to substitute for conventional surveillance but to stimulate "our accelerated intelligence investigations." Because of its sensitive character special security precautions are to be taken to prevent leaks.

The memorandum is curiously undiscriminating: the program is directed at *all* "New Left organizations," whatever their goals and however legitimate their activities ("we must frustrate every effort of these groups to consolidate their forces or to recruit new or youthful adherents"). Noteworthy also is the reliance placed on "the cooperation of . . . news media sources," providing they are ready to protect "the bureau's interest" and not to "betray our confidence." This last tactic (extensively used over the years by the bureau) would of course require divulging the contents of files, a professed bureau taboo.

Approximately three years later, on April 27, 1971, a memorandum again from Brennan to Sullivan transmits the recommendation that all counterintelligence programs ("Cointelpros") operated by Division 5 be discontinued. On the following day an implementing directive from Hoover was dispatched to the field offices. The asserted reason for this action was "to afford additional security to our sensitive techniques and operations," compromised by "public disclosure"—an apparent reference to the theft and publication of the Media papers in March 1971.

Of the bureau's seven known counterintelligence programs, one (captioned "Cointelpro: Espionage" or "Cointel Soviet-Satellite Intelligence") was a genuine counterintelligence program; that is, it was directed against actual or would-be spies of foreign countries, specifically the Soviet Union, operating domestically. Another program traceable from the bureau documents released to NBC newsman Carl Stern, is "Cointelpro: Communist Party, USA." The Attorney General claims that this program—along with all others directed against domestic targets—has been abandoned. He has refused to release the relevant documents because they were classified secret, but this was done only after their production was requested and in the face of the program's claimed abandonment. What seems more credible is that the documentation was much more extensive and revealing. The program against the Communists was regarded as a huge success and a testing ground for techniques later used against counterintelligence targets both on the Left and Right.

A third program, designated "Counterintelligence and Special Operations," appears to have functioned during the 1960s as a super-secret series of specific initiatives against particular activities of organizations and individuals. Documents dealing with twelve such operations appear in the bureau files but only three are covered in the papers released to Stern. One of these, dated April 4, 1969, approves "disruptive action" against two Bay Area organizations—one of them apparently a Chicano group and the other the Panthers. A document of December 24, 1970 discusses a "proposed disruptive action" against a leader of an organization characterized as a Black Nationalist group (from the context apparently the Black Panthers) with the objective of "neutralizing" him, and recommends that it be abandoned both because the leader broke with the group and "because of the expanding complexities of the proposed technique. . . ."

On May 11, 1970 the Research Section of the bureau's counterintelligence and special operations unit invited the San Francisco special agent in charge (SAC) to consider a detailed plan for "a disruptive—disinformation operation targeted against the national office of the Black Panther Party (BPP)" to be implemented with the active help of the local (either San Francisco or Oakland) police force. The plan proposes that a letter be sent to a Panther leader from a source in the local police department, posing as a disgruntled employee. This source, the plan recommends, would mail batches of documents, some genuine, some forged, on the stationery of the police department and the bureau, in such a manner as to give the recipient the impression that they were stolen.

The police documents would falsely record that certain Panthers were informers, that others were inept or irresponsible. Supporting tactics would include: "indicating electronic surveillance where none exists; outlining fictitious plans for police raids or other counteractions; revealing misuse or misappropriation of Panther funds; pointing out instances of political disorientation; etc." This disruption operation would develop the source's credibility by including information that was true. The letter ends on a reassuring note: "Although this proposal is a relatively simple technique, it has been applied with exceptional results in another area of intelligence interest where the target was of far greater sophistication."

In September 1964, the bureau instituted a counterintelligence program against white "Klan-type and hate organizations," not for the purpose of law enforcement but, as in the cases already discussed, to "expose, disrupt and otherwise neutralize" the targets. Again, as with the predecessor programs, it was intended both to complement and stimulate accelerated conventional intelligence activities against the target. Agents with imaginative gifts which qualify them for this work are urged to consult with the agents who are assigned to the regular investigation of the targets.

The following, from Hoover to the Atlanta SAC, is a sample of disruptive activity: "The devious maneuvers



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and duplicity of these groups must be exposed to public scrutiny through the cooperation of reliable news media, both locally and at the Seat of Government. We must frustrate any effort of these groups to consolidate their forces or recruit new or youthful adherents. In every instance, consideration should be given to disrupting the organizational activity of these groups and no opportunity should be missed to capitalize upon organizational and personal conflicts of their leadership."

The counterintelligence program described with the greatest detail of all those covered by the documents released by the department is captioned "Black Nationalist—Hate Groups—Internal Security," launched on August 25, 1967 even before the formal beginning of the Cointelpro. It was intended to "expose, disrupt, misdirect, discredit, or otherwise neutralize" the black nationalist organizations, "their leadership, spokesmen, membership and supporters." The objectives of the program are detailed as follows:

> The pernicious background of such groups, their duplicity, and devious maneuvers must be exposed to public scrutiny where such publicity will have a neutralizing effect. Efforts of the various groups to consolidate their forces or to recruit new or youthful adherents must be frustrated. No opportunity should be missed to exploit through counterintelligence techniques the organizational and personal conflicts of the leaderships of the groups and where possible an effort should be made to capitalize upon existing conflicts between competing black nationalist organizations. When an opportunity is apparent to disrupt or neutralize black nationalist, hate-type organizations through the cooperation of established local news media contacts or through such contact with sources available to the Seat of Government, in every instance careful attention must be given to the proposal to insure the targeted group is disrupted, ridiculed, or discredited through the publicity and not merely publicized. Consideration should be given to techniques to preclude violence-prone or rabble-rouser leaders of hate groups from spreading their philosophy publicly or through various mass communication media.
>
> Many individuals currently active in black nationalist organizations have backgrounds of immorality, subversive activity and criminal records. Through your investigation of key agitators, you should endeavor to establish their unsavory backgrounds. Be alert to determine evidence of misappropriation of funds or other types of personal misconduct on the part of militant nationalist leaders so any practical or warranted counterintelligence may be instituted.

The memorandum stresses that enthusiasm and imagination are required for this work. Special security measures are needed to keep the program under wraps not only on the outside but within the bureau. And, like all the other Cointelpros, no action is to be initiated without prior bureau approval.

The response was apparently sufficiently enthusiastic and imaginative for the bureau, in March of the following year, to extend the program to some forty-one of its field offices. On one occasion in the summer of 1967, the bureau alerted the local police to an activist group (the name is deleted in the document but the four-letter gap suggests SNCC). The obliging police not only put the leaders under close scrutiny but, "they were arrested on every possible charge until they could no longer make bail. As a result, [the] leaders spent much of the summer in jail and no violence traceable to [the group] took place." It is worth noting that specific capers of the sort described are rarely detailed in the documents; this one was, apparently, too instructive to omit.

The program has five goals, of which the first is to keep the nationalist groups divided. "An effective coalition of black nationalist groups might be a first step toward a real 'Mau Mau' in America, the beginning of a true black revolution." Next in importance is to "prevent the *rise of a 'messiah'* (italics in original) who could unify and electrify the militant black nationalist movement. [Name deleted but probably Malcolm X.] might have been such a 'messiah'; he is a martyr of the movement today. [Three or four names deleted] all aspire to this position. [Name deleted] is less of a threat because of his age. [Name deleted; probably Martin Luther King, Jr.] may be a very real contender for this position should he abandon his supposed 'obedience' to 'white, liberal doctrines' (nonviolence) and embrace black nationalism. [Name deleted] has the necessary charisma to be a real threat in this way."

## Dirty Tricks and Provocations

The next two goals are, on the one hand, to prevent violence by "pinpoint[ing] potential troublemakers and neutraliz[ing] them" and, on the other, to prevent such groups and their leaders from gaining "respectability" by discrediting them among "responsible" blacks. These groups must also be "discredited in the white community, both the responsible community and to 'liberals' who have vestiges of sympathy for militant black nationalists simply because they are Negroes." In addition, "these groups must be discredited in the eyes of Negro Radicals, the followers of the movement, an area which requires 'special measures.' " Finally, appropriate tactics must be developed to alienate youth from black nationalist organizations.

Neither Ramsey Clark, Nicholas DeB. Katzenbach, nor Richard Kleindienst, Attorneys General during the decade 1961-71 when these programs were operative, was ever consulted about them. Clark, Attorney General in 1967-68, said in a recent interview: "There's a very lawless tone to the memos. I don't think any of the tactics are ever acceptable for a government to use. Hoover showed almost a deranged attitude on certain subjects. . . . I have no confidence that any of this conduct has stopped." Director Kelley said in a broadcast at about the same time that all of the Cointelpros had ended in 1971, but that legislation was needed to sanction such programs in an emergency. He also insisted that the programs had done no great harm and that it was preferable to doing nothing. Such reassurances are unimpressive; the evidence points to a substantial disruptive effect, a conclusion based on interviews with victims and corroborated by the self-congratulatory tone that runs through the documents themselves.

Three areas supply the most revealing evidence of how Cointelpros operate. Two of them involve the Panthers, possibly the highest priority target of all for the disruptive and provocative operations of the late 1960s. These programs were hardly the first in which provocation or



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disruption ("aggressive intelligence," a more accurate term than counterintelligence) was employed, but earlier applications, as in the case of the tactics against peace protesters, were limited in scope.

The most important result of the Cointelpros was the arrest campaign which swept the country beginning in the summer of 1967, quite clearly an implementation by local police of the "Black Nationalist—Hate Groups—Internal Security" disruption program which, it will be recalled, specifically cited this false-arrest tactic. Beginning in mid-1967, a pattern emerged from the law-enforcement records of local police units throughout the country: arrests on such charges as conspiracy to commit murder, car theft, robbery, carrying concealed weapons, drug use, riot, felonious assault, resisting arrest, disorderly conduct, arson, defective tail lights (a favorite, along with scores of similar petty charges), possession of explosives—the list is very long. Whenever possible, prohibitive bail was set, so as to keep the accused locked up until the charges were ultimately dropped or reduced to a face-saving formality. In a legal action brought against the Los Angeles police, lawyers for the Panthers list some eighty examples of arrests on pretexts, threats, handcuffing and abuse of Panther members, illegal searches, followed by either ultimate release for lack of proof or a reduction of charges.

The bureau's contribution to this harassment was either to make informers available to local units or to relay tips supplied by its informers. This kind of assistance was especially important in providing pretexts of "probable cause" for raids, a favorite weapon and without doubt the most destructive.

The importance of the informers in the raid scenario is illustrated by the case of Fred Hampton who, along with Mark Clark, was killed in December 1969 during a raid by State's Attorney's police and detectives—sparked, as a grand jury subsequently found, by information supplied by FBI informer William O'Neal, whose bureau control agent, Roy M. Mitchell, was in charge of the Chicago Panther Cointelpro. O'Neal became the Panthers' "Captain of Security" and was himself arrested on a variety of charges ranging from drug possession to the attempted illegal purchase of firearms. Mitchell peddled O'Neal's "information" about an arms cache (which turned out to be vastly exaggerated) to the Chicago Gang Intelligence Unit in October and again in November 1969, and only when he was turned down twice did he approach the office of former State's Attorney Edward V. Hanrahan.

The role of the bureau was quite prominent in the case of Larry Ward, a black veteran who was entrapped and killed by the Seattle police in a stake-out. In January 1970, an informer, Alfie Burnett, was mysteriously released from King County, Washington jail where he was awaiting trial on a robbery charge. Burnett was sprung, according to Seattle police intelligence chief, Captain John Williams, because the bureau had recommended him as a valuable source of information on ghetto violence.

In fact, Burnett was actually "run" by the bureau with instructions to produce a bomber. When Burnett pleaded guilty to robbery, his parole officer, who had originally objected to his release, demanded his arrest after he repeatedly failed to appear for sentencing. The bureau had the officer overruled on the ground that Burnett was a source of valuable information. Burnett, meanwhile, was scouring the ghetto, offering money for the bombing of buildings. After many false claims and fruitless stake-outs, he found a victim.

On May 14, 1970 the FBI relayed to the local police a report from Burnett that the Hardcastle Realty Co. would be bombed that night. The police activated a stake-out. A second FBI call, at about 11 P.M. confirmed the earlier report. Finally, a third FBI call was received between 2 and 2:30 A.M. relaying Burnett's message that the bombing would take place in minutes. According to the most reliable accounts the bureau served as the mainspring and coordinator of the affair, acting on information received from Burnett.

The intended bomber, an ex-Panther named Davis, proved to be unavailable and his friend, Ward, had been recruited for the job at the last minute by Burnett's offer of $75 for the job. According to Burnett, in his final call to the bureau he "distinctly told them that it was Ward instead of [Davis]. I told them that he was unarmed and they asked me what kind of a car was I in, what my license plate number was and what color was it." Ward was killed almost instantly in a police ambush. All of the officers involved, as well as the police radio dispatcher, testified at a subsequent coroner's inquest that none of the three messages from the bureau stated that Ward was unarmed. Burnett later protested: "The police wanted a bomber and I got one for them. I didn't know Larry Ward would be killed." Seattle intelligence chief Williams blamed the bureau: "As far as I can tell, Ward was a relatively decent kid. Somebody set this whole thing up. It wasn't the police department. I think what happened was that the police got involved in a political hassle." The pattern of the Seattle case—an informer working with a local and a federal agency, a race-related "action" involving provocation and explosives—is repeated in disclosures about undercover agents Tackwood and James Jarrett (Los Angeles) and Tom Mosher (Palo Alto).

Another clear case of bureau collaboration with local police in a Cointelpro involves a young white lawyer, Arthur Turco, Jr., who in April 1970, was indicted along with seventeen Baltimore Panthers, ex-Panthers and supporters on a variety of charges arising out of the alleged "torture murder" of a suspected spy, Eugene L. Anderson —a counterpart of the "torture murder" of the alleged spy, Alex Rackley, in the New Haven Panther case. In the Baltimore case, initiated by a 150-man raid, the indictments came six months after the discovery of a skeleton buried in a park, first described by the local medical examiner's office as that of a white man, age 25 to 30, whose death was ascribed to a drug overdose. But when the skeleton was returned from the FBI laboratory in Washington, the remains became Eugene Leroy Anderson, a black man, age 20, killed by a shotgun blast.

Turco had represented the Baltimore Panthers, but the prosecution rested on the theory that he master-minded Anderson's execution and that his orders were carried out by three Panthers: Mahoney Kebe, Donald Vaughn and Arnold Loney. The three men were produced by the FBI as participant witnesses and turned over to the Baltimore red squad headed by Colonel (then Major) Maurice DuBois who had been a bureau agent for twenty-



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seven years. The April indictment—six months after the discovery of the body—came on the heels of a conference between Attorney General Mitchell and local police authorities. All three of the bureau witnesses received immunity, free room, board and a salary—an extravagance, in view of their confused and perjurious testimony. Kebe, the star witness, lied so brazenly that the judge on his own motion ordered him removed from the stand and his testimony stricken. The local prosecutor had admittedly sought guidance from Washington and had even attended a series of FBI lectures on "how to deal with Panther cases." The evidence is persuasive that Turco, who had given virtually all of his professional life to the defense of minorities, first in New York and then in Baltimore, was singled out in a Cointelpro drive against activist lawyers. In the Baltimore case, the Panther accused of being the hit man was acquitted; the prosecutor offered deals to the remaining defendants. When they refused, he was compelled to admit that he had "insufficient evidence to prosecute" seven of the defendants, dropped all charges against them and substituted drastically reduced charges against the rest. Turco's original capital charges were, after a mistrial, reduced to common assault to which he reluctantly agreed to plead guilty, a decision resulting from serious damage to his health by imprisonment without bail for ten months in the Baltimore city jail (subsequently closed down as a health hazard) and other pressures.

It is plain not only from the Baltimore, Seattle and Chicago cases here outlined but from others throughout the country, that in the "Black Nationalist" Cointelpro the bureau served as a supplier of informers to the local police, a role for which it was uniquely qualified by ample funds and interstate controls. The Cointelpro disclosures help explain why it was that FBI informer, Roland Hayes, traveled to Vermont and, with bureau funds, purchased dynamite which he turned over to the New York Panthers, subsequently indicted for a bomb plot. One of the bureau's Baltimore informers, a white youth, Jim Burnett, was recruited in South Carolina while serving a prison term and later turned over to the Baltimore police. His ex-wife describes in an interview how he "wrote me a letter [from a South Carolina jail] saying he made a deal with the FBI that they would let him out early, if he would get in with a subversive group and inform on them. . . . And I didn't realize then that it would be our friends he was informing on."

In 1969, after the Director had denounced the Panthers as the greatest single threat to our security, at least ten Panther raids, in addition to those already mentioned, were executed by local police in cities throughout the country. In most instances, they began with a bang in the headlines and ended with a whimper in courtrooms. Although hard proof is lacking, the pattern of these raids strongly suggests federal involvement and coordination.

The Cointelpro tactics directed against the old Left became familiar as early as the 1950s: threats, oppressive tailing, pressures to deny targets a meeting place. Refusal by a subject to renounce his politics or to "cooperate" (become an informer) was followed by pressures on employers, school authorities, parents, et al. In the 1960s, the tactics became more sophisticated and use was made of deception, forgery, decoys, "dirty tricks" and the like. A document filed in federal court in April 1974 by the Socialist Workers Party lists some 150 examples of harassment which were typically carried out in a context of charges of illegality, violence, threats to "national security" and subversion. Where an employer had a government contract, even if quite unrelated to defense work, he was told that the bureau disapproved of employment of SWP members. A favorite form of pressure was the agent's reminder that he had photographs of the subject and his activities and that he was being "used" or "duped." In addition to the admitted mail cover and wiretapping mentioned earlier, the SWP charged a series of burglaries, arson, bombing attacks and related forms of aggressive tactics.

The Cointel project raises questions which cry out for a Congressional probe. Was it a misbegotten offspring of the September directive? Or was it "prevention" pushed to the limits of its logic? More particularly, were Ward, Hampton, Turco and others victims of the "enthusiasm" and "imagination" of bureau agents who, as Captain Williams suggests, left local police holding the bag when the projects misfired? And was the blanket termination of all the programs in 1971 explained not by the fear of compromising their secrets but by the imperatives of a cover-up?

## The Convenience of the New Left

Intelligence systems adopted for peacetime use against domestic targets must expand or die. The menace from which the spy master saves the populace must never be conquered, his efforts may win acclaim, but never wholly succeed. To maintain this delicate balance requires a constant escalation of fear; but the passage of time weakens the power of the menace to stir response and new sources of danger must be exploited. In addition to the old and New Left, the bureau, from the late 1940s on, has steadily increased its targets to include leftist and liberal organizations of varied hues ("the Communist conspiracy"). This systematic increase in the population of the bureau's surveillance subjects was accompanied by an enrichment of the rhetoric of anti-communism. The traditional lurid images of violence, filth, immorality and godlessness gave way to new epithets of cunning, craft, deception, concealment and the metaphors of conspiracy: Trojan Horse, Fifth Column, the tip of the iceberg.

In contrast to the static and declining old Left, the new sector provided an infinitely expandable intelligence subject matter for which the vague and ductile terms, subversion and subversive activities, were admirably suited. The bureau's rationale for surveilling these organizational targets is either an already tainted relationship to old Left groups or the need to determine whether the Communists are attempting to infiltrate. The Director repeatedly denied that the FBI investigated labor unions and their members, merely "Communist infiltration into a union." Former agent, Robert Wall, has insisted there is no operational difference between the two. Files dealing with these two groups are coded "Cominfil" (Communist Infiltration). A third classification is monitored because the targets, anti-war and civil rights groups, for example, are considered inherently suspect.



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These groups are subjected to a full range of surveillance tactics from overt physical surveillance to wiretapping and informer penetration. As a matter of fact, informers are planted in these targets to supply them with a cover for penetration of other groups. The informer's super militancy in the non-Communist group, his proclaimed impatience with the slow pace of his associates, clothe him with a requisite credibility when he is instructed to seek entry into more inaccessible organizations.

A sample of the number and range of such surveillance targets across the nation is supplied by the following list of organizations penetrated by Robert Merritt, an FBI and D.C. Metropolitan Police informer:

The Academy of Political Science
The American Civil Liberties Union
Action Resources Collective
*The Advocate*, a publication of the National Law Center at George Washington University
American Friends Service Committee
Anti-War Union
Attica Brigade
Black Peoples' Party
Clear Creek
Children's March for Survival
Coalition of National Priorities and Military Policy
Committee for Study of Incarceration and D.C. Corrections
Common Cause
*The Furies*, a radical feminist publication
Md.-D.C. Committee to Oppose Political Repression
Community Bookshop
D.C. Statehood Party
Gay Activist Alliance
Howard University Committee to Free Angela Davis
Institute for Policy Studies
Middle East Research and Information Project
National Organization for Reform of Marijuana Laws
*Off Our Backs*, a women's monthly feminist magazine
People's Coalition for Peace and Justice
RAP, Inc., a local drug rehabilitation program
Tenants' Rights Workshop
Runaway House
The Union of Radical Political Economists at American University

In addition, a wide range of activities—meetings, conferences, lectures, rallies—are surveilled because of the presence or participation of an individual target. One need only recall the surveillance of an Earth Day rally in the spring of 1971, at which Senator Muskie was the main speaker, because Chicago conspiracy defendant Rennie Davis also participated. In the same way the bureau's Cointelpro operation against black nationalists in Chicago resulted in the surveillance of all black leaders who were seen from time to time with so-called militants, especially Panthers. The product of this sweeping surveillance, much of it collected by covert methods, was stored in extensive secret files on hundreds of black civic, business and political leaders in Chicago ("File 137"). Rep. Ralph Metcalfe was included among the subjects.

Finally, it should be remembered that just as the unenforceability of the Smith Act removed a possible law-enforcement justification for surveillance of the old Left, so the judicial elimination of the front and infiltration provisions of the Internal Security Act left the surveillance of non-Communist organizations without even a shred of legitimacy.

## Gossip Peddling

Intelligence agencies, in a democracy anyway, are vulnerable to attack by other power centers, by their victims and by libertarian critics. To survive, the agencies exploit their resources against critics and enemies by making them intelligence targets. In the next step, the unit forms alliances with its supporters and develops intelligence initiatives against the political opponents of these allies. The initiatives—harassment, blackmail, dirty tricks—originally stimulated by the search for a means to discredit or neutralize a subject through scandalous material about his private life, especially his sex life—frequently turn out to be extremely effective and become part of the unit's operational practice. Thus bureau informers are told to report on the "sexual hang-ups" of subjects. This process was greatly intensified in the bureau by Hoover's power drives.

He discovered early that the sharing of gossip about the private lives of politicians and public figures—a great deal of it picked up from tapping and bugging—was an effective way to get "close to" the President. As we have seen, Hoover commenced the practice in the 1940s. At least until the late 1960s, the sharing of gossip about prominent figures of all kinds played a key role in Hoover's courtship of the White House and the need for White House approval became especially sharp after he turned 70, when his tenure depended wholly on Presidential favor.

In February 1973 the *Oregon Times*, a tiny Portland publication, published a confidential FBI memorandum dated January 1, 1971, the authenticity of which has never been denied. Addressed by the Portland SAC to area agents, the memorandum is headed, "FBI Intelligence Letter for the President." File No. 65-2054 (p). The code name for this operation is "Inlet" and its specific subject is designated "Research-Satelite (*sic*) Matter." According to one FBI source, the project "was used by Hoover as a way of getting favor at the White House."

"For the information of all Agents," the memorandum begins, "the Bureau during 1969 initiated captioned program of furnishing high-level intelligence data in the security field to the President and the Attorney General on a continuing basis. The material to be furnished is not of a routine nature but rather that which has the qualities of importance and timeliness necessary to secure the President's interest and to provide him with meaningful intelligence for his guidance."

This "meaningful intelligence" is broken down into six categories including "pending developments" in security cases and "inside information" about demonstrations. Particularly noteworthy is the sixth category—(A bureau agent has suggested that the first five classifications were probably introduced as a cover for the last one)—"Items of an unusual twist or concerning prominent personalities which may be of special interest to the President or the Attorney General." The meaning of this item is explained by a special gloss: "It is to be noted that the type



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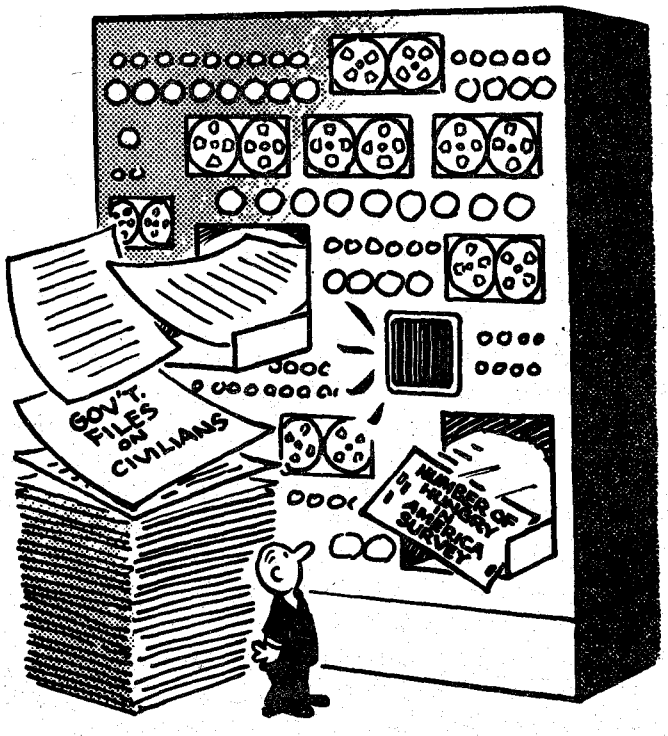
of information desired in paragraph six may be obtained through investigations, not wholly related to the security field." We are, of course never enlightened about the source of the bureau's authority to develop information through covert or overt surveillance and to open files about subjects solely because of their prominence or because their lives have been marked by "an unusual twist."




Graham, Arkansas Gazette (Little Rock)
*"Sorry, That Information Is Not Allowed to Compute!"*

This program and another for which the code symbol is "CO," jointly run by the bureau and the Secret Service on the weird assumption that prominent individuals and not obscure loners are potential assassins of public figures, have produced acres of "celebrity files." The bureau, which both generates and receives such celebrity information from the Secret Service, has periodically claimed that the material collected is primarily public information such as newspaper clippings. It has also argued that this information is useful to the White House as a source of "background" on potential invitees to White House functions.

The first claim—also advanced in defense of the bureau's Congressional filing practices to be discussed below—is sharply challenged by the actual files, many of which have been leaked. They are full of lurid details about the private lives of the subjects, gossip offered by sources hostile to the subject (ex-spouse, former mistress or boy friend, suspicious husband) or by "informants" (either an individual or a tap), landlords, taxi drivers, et al. And even the newspaper clippings are sometimes based on items deliberately leaked from the bureau's files to a friendly newsman and thus "laundered."

The second claim is also unpersuasive. The files contain "background material" hardly necessary to an evaluation of an individual's suitability as a guest for a White House function—for example, that a prominent football player had once procured an abortion for a girl friend; that a well-known novelist is a homosexual, or that a prominent conductor was a friend of a priest actively opposed to the war.

Whatever the justification, it is undeniable that the bureau investigates, not occasionally but systematically, individuals in the public eye for reasons wholly unrelated either to law enforcement or to national security, however broadly that term may be defined. These bureau files deal with Lance Rentzel, Joe Namath, Eartha Kitt, Marlon Brando, Paul Newman, Rock Hudson, Tony Randall, Donald Sutherland, Harry Belafonte, Zero Mostel, Jane Fonda, Joe Louis, Mohammad Ali, Dick Gregory and I.F. Stone among many, many others. Black leaders seem to have been a special target: Walter Fauntroy, Congressional Representative (nonvoting) for the District of Columbia, Martin Luther King, Jr., Coretta King, Ralph Abernathy, Jesse Jackson, Floyd McKissick, Roy Wilkins and Bayard Rustin.

In the case of Ralph David Abernathy the file of both personal and political items is enormous, simply because the bureau maintained such a large number of surveillance inputs, including apparently a bug in his bedroom. Martin Luther King, Jr., along with his family, friends and associates, was similarly enmeshed in an eavesdropping network that channeled personal details of the lives of many subjects into bureau files.

Both internal security investigations and background checks sometimes serve as covers for collecting data for a wholly different purpose. Critics of the bureau are a favorite target; some who fall in this class are the authors of three critical books on the bureau: Max Lowenthal, Fred J. Cook and William W. Turner. Other critics who have suffered reprisal probes include W.H. Ferry, a former official of the Fund for the Republic who vigorously critized the bureau's policies. A bureau file on his "background" was circulated to certain favorite Congressmen. Joseph Rauh of the ADA was attacked with bureau material by a Hoover Senatorial proxy after he praised a book critical of the FBI. An article by Alan Barth brought the same response. The list of such targets is quite long. The bureau's files of prominent individuals were useful in compiling the Administration's "enemies list" and bureau field investigation was used as a pretext for discrediting Daniel Schorr, CBS-TV newsman who was thought to be an unfair critic of the Administration.

In the case of Jack Anderson, a long-standing bureau and Administration target, a criminal charge against his associate Leslie Whitten of "possessing" documents stolen from the Bureau of Indian Affairs, was used as a pretext to subpoena his telephone records in an obvious attempt to probe news sources wholly unrelated to the criminal charge (predictably rejected by the grand jury). Anderson at the Gray confirmation hearings told how these sources had overnight become targets of bureau investigations.

## The Taking of Capitol Hill

Another revealing clue to the bureau's politicization is the Congressional Relations Service. In 1950 the bureau began a program of gathering and filing information on nonincumbent Congressional candidates. In the



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summer of 1972 this practice came to light as the result of inquiries made by an overzealous Lorain, Ohio, FBI agent into the background of the Democratic candidate for Congress in Ohio's 13th District. Acting Director Patrick L. Gray 3rd in a press release terminating the program, explained:

> Around 1950, the officials of the FBI then responsible for dealing with the Congress decided it would be most beneficial to them if they had some biographical data on newly elected Members and a knowledge of any prior contacts by FBI representatives with these new Congressmen and Senators. Initially, they orally requested FBI field office officials to furnish the desired information. In 1960, the practice was begun of requesting such information by sending routine slips to the various FBI field offices. This has been followed each election year since that time.
>
> The information was gathered for our own internal use and not in response to any regulation or statute. At first, information was sought only on nonincumbent candidates for Congress. In 1960, the requests were expanded to include nonincumbent candidates for Governorships, since FBI officials also felt their contacts with Governors could be enhanced by some prior knowledge of the individual's background.

But what Gray did not say is that the bureau fed the information to incumbents, an investment in good will, and a resource in recruiting bureau support on the Hill and avoiding those whose backgrounds indicated that they were potentially hostile. Far more important, though less tangible, was the fact that the program gave substance to the widespread Congressional fears that the bureau "had something" on most legislators.

Nor were these fears ill-founded. Information obtained either through the Congressional Relations Program or through other bureau probes was consistently used to intimidate legislators. On May 15, 1973, Jack Nelson, a reporter for the *Los Angeles Times* and a specialist in bureau matters, interviewed William C. Sullivan, a former FBI Assistant Director and a close ally of the Nixon Administration. Sullivan said of Hoover, "That fellow was a master blackmailer and he did it with considerable finesse despite the deterioration of his mind. He always did that sort of thing. The moment he would get something on a Senator, he would send one of the errand boys up and advise the Senator that 'We're in the course of an investigation and by chance happened to come upon this data on your daughter. But we want you to know this—we realize you'd want to know it. You don't have any concern—no one will ever learn about it.' Well, Jesus what does that tell the Senator? From that time on the Senator's right in his pocket." Small wonder that in the spring of 1973 President Nixon remarked sadly to Dean that, had Hoover been in charge of the Watergate investigation, "he would have defied a few people. He would have scared them to death. He had a file on everybody."

Even more intensive use of the bureau's resources was made to reward the Director's special legislative friends and to punish his more outspoken foes. An interview between a "well-placed bureau source" and *New York Times* reporter John M. Crewdson, corroborates the Sullivan disclosures that "derogatory information, accidentally turned up in the course of other investigations, was put to discreet blackmailing use and to draw legislators into what Hoover called 'our stable.'"

The House Appropriations Committee members, for reasons hardly inscrutable, and in particular John Rooney, chairman of its subcommittee on the judiciary, received special treatment. In 1972 the bureau, on Hoover's orders, investigated Rooney's opponent Allard R. Lowenstein and gave Rooney "everything we knew" about the challenger. In 1970, Rooney was also unsuccessfully challenged for the Democratic Congressional nomination—this time by a young civil rights lawyer, Peter Eikenberry. According to Eikenberry, Rooney made use of two smear items—that as an undergraduate, fourteen years earlier, he had been arrested on a minor charge and that he had been dismissed from an ROTC unit—which could have come only from the bureau.

In his historic April 22nd speech Rep. Hale Boggs charged that he and other members of the House had been tapped, bugged and otherwise harassed. The charges collapsed under the weight of Administration denials, including the following from Hoover: "I want to make a positive assertion that there has never been a wiretap of a Senator's phone or the phone of a member of Congress since I became Director in 1925, nor has any member of the Congress or of the Senate been under surveillance by the FBI." The accuracy of this statement is quite doubtful even if read literally. But the fact that material about legislators' private lives has entered bureau files is no longer open to serious challenge, whether it is the result of direct surveillance or third-party surveillance.

Hoover never denied that his agents sometimes "overheard" legislators by tapping the phones of others. Two outstanding examples of such inputs into the phone conversations of Congressmen are the bugging of the phone of lobbyist Fred Black in 1966 and the subsequent tapping of phones in the investigation of Nathan Volshen and Martin Sweig on influence-peddling charges. On February 28 of this year, Rep. Bertram Podell, under criminal indictment, charged that his phone had been tapped. An affidavit by Attorney General Saxbe stated that "one of the defendants" in the Podell case had, in the Congressman's words, "been electronically surveilled on numerous occasions in the interests of national security as the result of an order of the President of the United States, Richard Nixon."

## In Sum, a Political Police

The Director's response to criticism and fears of abuse of power has always been the same: that he would never permit the bureau to become "political." The operational patterns described in the preceding pages are, of course, purely political and totally unrelated to the bureau's mission, however expansively it is defined. Undoubtedly the bureau's defenders will insist that it is unfair to condemn the agency for wild excesses of the past that are not likely to recur. But it is unnecessary to debate this claim; the bureau's routine operations were, not casually or accidentally, but inherently political in any meaningful sense of the word.

And the FBI's claim to political neutrality seems little



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more than an empty slogan when tested against the reality of its alliance with the Congressional conservative bloc, its role in right-wing local politics and the deterrent effect of its propaganda, surveillance and filing practices on movements for change. To deflect charges of impropriety, the bureau paraded certain self-imposed operational limitations: (*1*) It was a purely passive instrumentality, collecting facts for evaluation and action by decision and policy makers. (*2*) Its files were to be kept strictly confidential and not divulged to unauthorized third parties. (*3*) The bureau's resources would not be used to impair the exercise of the protected freedoms. None of these alleged safeguards protected the victims from bureau abuses; on the contrary, they were almost invariably invoked only as a bureau shield.

The no-evaluation canon has been used to justify the bureau's vacuum-cleaner style of data collection. Why complain, since no evaluation of the data was contemplated? More important, the bureau applies this limitation in a curiously selective way. It is confined to employee applicant investigations and even here the formally nonjudgmental results of the probe are (especially in the case of important posts) supplemented by behind-the-scenes bureau pressure. It was routine for Hoover, when he could not persuade an agency chief to take action against an employee thought to be subversive, to take his "case" to his Congressional allies.

"Evaluation" was the bureau's trademark. It runs through the entire surveillance process: the selection of targets, the recruitment of informers, the drafting of documents summarizing investigative files, the invitation to draw an inference of subversion from such evidence as a speech on world government, the heavy concentration on the black targets. How can it be denied that Hoover's Senate committee testimony on the Berrigan case was to its core evaluation and conclusion?

The claim that files are confidential is equally unreliable and, like other bureau defenses, is invoked selectively. Government employees who face possible discharge are frequently denied sufficient access to the bureau files containing the alleged evidence against them, on the ground that to grant it would identify the bureau's informers. But file materials are divulged by the bureau for its own purposes. At the 1953 White hearings, file material was freely circulated. In recent years critics within the bureau have leaked files to publicize the FBI's abuse of its powers. (We have not begun to comprehend the ramified effect of reproduction techniques on attempts to preserve confidentiality.)

Edward Shils has perceptively pointed out that Americans are highly ambiguous about secrecy. On the one hand, an extremist tradition rooted in hyperpatriotism, xenophobia, fundamentalism, populism and fear of conspiracy rejects secrecy. Publicity is viewed as an indispensable weapon for the nation's protection. But secrecy is also considered a safeguard against the subversive enemy. So, for example, retaining the secret of the atom bomb became in the 1950s an article of faith for large sections of the population. In addition, the secret character of certain government operations instilled in these same individuals a feeling of security, a defense against the secret machinations of the enemy.

The bureau's operations reflect this dualism. Secrecy was highly important because it shielded the bureau from scrutiny, justified its free hand on budget allocations and hiring, and promoted a closed bureaucratic operational system and personnel solidarity—an ideal setting for Hoover's autocratic administration. At the same time, the Director never lost an opportunity for publicity. Thus, while the identity of informers was kept secret, the existence of an informer network was widely trumpeted. The details of internal security surveillance were blurred but the results were channeled to the public. Similarly, the intelligence product, assertedly sealed by the demands of professionalism, fairness and the law, was systematically used against not only subversive targets but critics and hostile legislators. In short, the bureau used both secrecy and publicity to further its interests and enhance its power.

Secrecy of the files was routinely violated in the field. Bureau agents regularly made available to local friends and media favorites file material to help curb campus radicalism and influence political elections and even trade union elections. Last fall a former president of the University of Oregon student body obtained a retraction and money damages as a result of a lawsuit against the bureau for turning over his file to the news director of a local radio station. The Director made no convincing effort to conceal his use of the intelligence product to influence decisions. His justification was that he was not trafficking in raw files—these were inviolable—he was merely transmitting *reports* based on file materials. In effect, "secrecy" was maintained at the expense of "no evaluation."

It should be noted that, again entirely without authorization, Hoover stretched the limited mandate in the Presidential directives to share relevant data with the Army and Navy into a widespread network of recipients of a weekly intelligence bulletin.

The third safeguard—respect for the rights of free speech, thought and association—is rarely mentioned in bureau literature. The strongest reference appears in a 1950 FBI report which assures the reader that "no conscientious American" should have reason to doubt the bureau's "wholesome respect for the civil rights and liberties of the individual. The FBI is concerned only with acts, not thoughts; a man may think what he likes as long as his thoughts are not translated into action by engaging in either criminal or subversive activities." All of the bureau's pronouncements in this area are of the liberty-but-not-license variety. The Director, in response to complaints of surveillance of students or professors, repeatedly insisted that the bureau had the highest esteem for academic freedom. It was somehow assumed that such assurances were self-validating.

Why was Hoover, chief of a government bureau under the supervision and control of a Cabinet officer with a special charge to safeguard constitutional rights, permitted to engage in illegal and unauthorized conduct, the development of a political police corps so threatening to the democratic process? Why did the Attorney General fail to assert his authority when the Director by-passed him? Why did the Congress remain silent for so long? When in all our history has so much unreviewed power been wielded by one man for so long a time? Why did



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Americans, even dissenters and civil libertarians, fail to call for an accounting? Why did the claimed authority of the September 6th directive for peacetime domestic intelligence go unchallenged until the early 1970s when its vitality and scope were placed under a cloud in a Senate hearing?

The answers to these questions have been suggested in the foregoing discussion: the country became a captive of the myth of anti-communism; it was politically dangerous to challenge the man who had contributed so much to its effectiveness. Who would dare say the Director wore no clothes? Certainly not the attorneys general; if they had misgivings, they suppressed them for three decades. For much of the period of Hoover's rise to power the Attorney General was chosen for his political qualifications and was hardly inclined to curb an official with the Director's popular and Congressional base, not to speak of his White House support.

The open acceptance and endorsement of Hoover's claims came slowly. In the annual reports of the Attorneys General from 1939 to 1947, internal security matters are treated as an aspect of national defense; no reference is made to the bureau's claim of separate peacetime intelligence jurisdiction. In Attorney General Clark's report for the year 1948, we are told that the cold war and the advent of the atom bomb made it "more necessary than ever that the internal security of the country be maintained." Still, there is no express mention of the bureau's claim of intelligence jurisdiction unrelated to law enforcement. But the report echoes with assurances of the department's "alert and continuing vigilance." The 1949 report of Atty. Gen. Howard McGrath also speaks in muffled tones about the bureau's intelligence role, but its meaning is clear:

> Not only must the national security be safeguarded from breaches from without, but it must also be protected from internal attempts to weaken it through the diffusion of subversive ideas and the establishment of un-American ideologies. The Department's achievements with respect to subversive activity were a part of a continuing and vigorous campaign it has carried on in this field. . . .

Attorney General McGrath's 1950 report goes all the way. The bureau has two separate kinds of power: criminal investigation and

> the second and perhaps the most important field of activity in which the Bureau is engaged is that of internal security matters. The latter responsibility was reposed in the Bureau by Presidential Directive in 1939. . . . During the years that it has dealt with matters of this type, the Bureau has acquired a deep-seated knowledge of the principles and motives which actuate subversive individuals and has, through practical experience with such individuals and organizations, become thoroughly conversant with the techniques and procedures used by them . . .

This report, with its long section on internal security, its denunciations of the menace and its bouquets for the bureau, clearly shows that the Truman administration, through its highly political Attorney General (a former head of the Democratic National Committee), tried to use the bureau to out-McCarthy McCarthy.

As the decade progresses, the Director's style and voice overpower the Attorney General's. The bureau takes over the section of the Attorney General's report dealing with its achievements, first as ghost and then openly. Ever more clearly, in both bureau and Justice Department reports, we hear the true voice, performing in muscular rhetoric, the familiar Hooverian medley.

We may know how we came this way but, to paraphrase Archibald MacLeish, by what way shall we go back? Attorney General Stone in 1924 had no difficulty in compelling the bureau to confine itself to specific law-enforcement responsibilities. Today, the bureau is still not authorized to exercise political intelligence powers. But who will play the part of Stone and again force the bureau to retreat to its proper limits? It is plain that Attorney General Saxbe cannot wear Stone's shoes; in the first week after he took office he approved White House applications for three national security wiretaps and he has indicated that he will allow Director Kelley free rein. His reference to Communist Jews indicates that, far from offering hope of solution, he is part of the problem. And if past experience is a reliable guide, the Senate Oversight Committee, headed by Judiciary Chairman Eastland, will merely serve as a shield to ward off criticism (it has already done so).

Things are looking up for the bureau. The death of the Director, the confirmation of Kelley and the departure of Ruckelshaus and Richardson have turned off the heat. One man's imprint on the bureau was so deep, long and all-embracing that the end of his rule seemed change enough. Even Director Kelley's November 29th "prevention" speech, with its commitment to continuing present intelligence practice—a trial balloon—stirred litttle response. The reassurances of Director Kelley apparently seem to some adequate for the present; as for the future, Kelley reminds us that directors will not be outsiders but "bureau-trained." But neither his self-serving pronouncements on the subject of intelligence jurisdiction nor bureau training (certainly as we have experienced its consequences for the last thirty years) should satisfy the rest of us. The almost predictable failure of Congress to deal with this question of towering importance, the bureau's political police functions, may well be regarded as ratifying the existing system, an ominous and possibly irreversible commitment which may permanently threaten the structure of freedom in this country. Meanwhile, the intelligence community is closing ranks: Kelley has appealed for standby "counterintelligence" powers, Saxbe is considering a revival of the Attorney General's list, and HISC is furiously proclaiming that we stand naked to the enemy, and has rushed to the support of the bureau's jurisdictional claims.

After the cold war and the shame of McCarthyism, after the follies and cruelties of the Congressional committees, after Tom Clark and McGrath, after Mitchell and Kleindienst, after the "national security" frauds of Watergate, after Gray's surrender of the bureau into the hands of the White House, after the exposure of civilian surveillance by the Army, after the Kissinger wiretaps, after the train of revelations of Hoover's abuses (themselves a blueprint for totalitarianism), after the Plumbers, after Cointelpros, after the decades of nightmare about subversion—have we still learned nothing? □



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# BOOKS & THE ARTS

## Waiting for Gatsby

THE BASIL AND JOSEPHINE STORIES. *By F. Scott Fitzgerald. Edited with an introduction by Jackson R. Bryer and John Kuehl. Charles Scribner's Sons. 287 pp. $8.95.*

**JACK SALZMAN**

I suppose there will be an audience for this collection of Fitzgerald's Basil and Josephine stories: librarians, no doubt, will want it, as will Fitzgerald collectors and some academics. But who else? Of the fourteen stories reprinted in this collection, eight have long been available in *Taps at Reveille*, and three additional stories are to be found in *Afternoon of an Author* (both are available in paperback at a combined price of $5.50). That means that what Scribner's is offering for $8.95 is essentially the first book publication of three minor stories: "That Kind of Party," "A Snobbish Story" and "Emotional Bankruptcy." Not a very good buy, it seems to me.

Of course, others may see the publication of the Basil Duke Lee and Josephine Perry stories in somewhat different terms. This, after all, is the first time that all these stories have been collected under one cover. Certainly, the editors of *The Basil and Josephine Stories* feel that the stories "deserve" to be in one volume; apparently so do the people at Scribner's; and, for a while, so did Scott Fitzgerald. He began writing the Basil Lee stories in the early part of 1928—to make money, no doubt, and possibly as a diversion from the problems he was having with *Tender Is the Night*—and by February of the following year he had completed at least eight of the series. (The date of composition of a ninth story, "That Kind of Party," is unknown, but it too was almost certainly written in this period.) With the exception of "That Kind of Party," all the Basil Duke Lee stories were published in *The Saturday Evening Post* by April 27, 1929. The frequently autobiographical stories obviously came easily to Fitzgerald—four or five were written while he was in Europe or traveling—and they earned him $3,500 a story. Both his editor, the redoubtable Maxwell Perkins, and his agent, Harold Ober, wanted "to have a book of them sometime," and for a while the idea was appealing. But Fitzgerald did nothing about it. In fact, by September 1929 he was convinced that "The Basil Lee stories were a mistake—it was too much good material being shoved into a lousy form." Despite his reservations, in the first month of 1930, as both the depression and Zelda's mental state worsened, Fitzgerald once again turned to his past and began to write a series of stories about Josephine Perry, a counterpart to Basil Lee. By mid-August of 1931, five Josephine stories had appeared in the *Post* and there was renewed talk about issuing a book of stories. Still, Fitzgerald was reluctant: *Tender Is the Night* was not yet ready, and as he had told Perkins as early as July 1928, he would seriously consider publishing the stories in a single volume only after *Tender Is the Night* came out, "so as not to seem in the direct line of my so-called 'work.'" When *Tender Is the Night* finally was published in 1934, Fitzgerald sent Scribner's a letter suggesting, among other possibilities, the publication of the Basil Lee stories together with the Josephine Perry stories and "one or two added, the last of which will bring Basil and Josephine together—making a book of about 120,000 words under some simple title such as 'Basil and Josephine.'" Scribner's was willing, but Fitzgerald backed down. "On thinking it over and in going over the Basil and Josephine stories the business seems impossible," he wrote Perkins. "They are not as good as I thought." Moreover, Fitzgerald did not want a collection of Basil and Josephine stories presented as a novel, for the critics who now regarded him as a serious writer would be "disgusted," and "if it were presented as short stories then what is the advantage of it over a better collection of stories?"

But now, almost forty years later, here they are. So much for Fitzgerald's wish that the stories not be collected in one volume, or indeed that some of them never be reprinted at all. His reputation as a serious novelist is now more than secure, and so, the editors of *The Basil and Josephine Stories* tell us in their introduction, Fitzgerald's "misgivings and objections are irrelevant." Perhaps, but I think not. One can make all kinds of extravagant (and sometimes meaningless) claims for this collection, and Professors Bryer and Kuehl do just that: Fitzgerald was older when he wrote these stories than when he wrote *This Side of Paradise*, and so he was able to "recapture his youth and view it with ironic detachment as well"; the fact that these stories are so closely based on Fitzgerald's own adolescent experiences "makes the use of the 'double vision' here of even more note than in *Gatsby*"; the Basil stories are linked in ways "which make a reading of them obligatory." But when all the critical shadowboxing is over there are still the stories. And they simply are not very good. They may tell us something about Fitzgerald's thought process, about his maturity and new insights, but as stories, as literature, most of them have almost no interest at all. One or two of the Basil stories—"The Freshest Boy," "The Captured Shadow"—are good Fitzgerald. But none of the Josephine stories are, not even the last, "Emotional Bankruptcy," which has little more to offer than the phrase itself. No, despite the claims made by the editors of this volume, Fitzgerald's own estimate is much more germane: "they would require a tremendous amount of work [he wrote Perkins] and a good deal of new invention to make them presentable."

To get at Fitzgerald's art we must turn, as always, to *Gatsby, Tender Is the Night*, and those few stories—"Crazy Sunday," "Absolution" and "The Diamond as Big as the Ritz"—in which Fitzgerald's "good material" managed to find its perfect form. □

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# FILMS

**ROBERT HATCH**

*Going Places*, written (novel and screenplay) and directed by the Frenchman, Bertrand Blier, is modeled on what begins to look like the American successor to the Western. This is the cross-country skittering of a couple of dropout pals, who laugh and threaten, steal and flee, to express their liberated contempt for organized society. This formula might make some claim to respectful attention if its sundry proponents gave any indication that they were offering an example



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of current pathology, but the generally genial appreciation of grass-roots amorality seems to promote it as a viable escape from the dissatisfactions of the times. True enough, society is in a fearful state —probably an even worse state than usual—but I'm not persuaded that these lack-wit cases of arrested development have much status as gurus, and I'm tired of having their seedy revels displayed for my entertainment, let alone instruction. Freedom that is expressed in a series of stolen cars being driven nowhere in particular seems not applicable on a very large scale, and the active life of such libertarians must be somewhat shorter than that of a professional ballplayer. I wish someone would make a film about the superannuated road boy.

In the present case, Jean-Claude and Pierrot (Gerard Depardieu and Patrick Dewaere) are not primarily dedicated to stealing cars; it is but a means to their ultimate goal, which is copulation—preferably with women. That, they keep reassuring each other, is the only thing worth doing in life.

Imagine then their consternation upon encountering Marie-Ange (Miou-Miou), an almost excessively available girl who is nonetheless incapable of being aroused (this disability astonishes the ill-educated pair more than it would a clinical psychologist). They exert themselves, taking turns, in prodigies of sexual exercise that are as entertaining as a spring afternoon in the monkey house, but Marie-Ange is eventually released from frigidity by a rawboned youth who is passing by on his way to a murder. The friends enjoy the fruits of his therapy, but suffer some diminishment of phallic ego. Pride, one sees, can fall from almost any level.

I believe it is being implied that the virtue of Jean-Claude and Pierrot is that they are nonviolent. They threaten and look dangerous in a wheedling way, but aside from some slapping around to relieve irritation and an attempted murder with a booby-trapped car, they do not overtly hurt people. However, it depends on what you mean by violence. I would include in that category, for example, the exploit of so terrifying a nursing mother that she consents to give suck to one of the hoodlums; the fact that she is shown to enjoy the experience makes it no less an assault.

Then there is the episode involving Jeanne Moreau. The boys have the bright idea of lurking outside a women's prison, on the assumption that a released inmate is certain to respond vigorously to their advances (a happy change from Marie-Ange). Out comes Mlle. Moreau; they chat her up, clothe her, feed her, and she does indeed suggest they they all go to bed. Score a point for the master tacticians, and the situation has an acrid humor. But then at dawn the woman rises from her sleeping companions, goes into the next room and commits suicide by firing a revolver into her genitals. Why suicide and why this means? The film does not say, but it seems evident that, if the protagonists avoid violence, the director assumes that an audience will lap it up. At the end, Marie-Ange and the boys are singing their way down a mountain road, driving a car that may or may not be the very one they fixed to turn over sometime on a sharp curve. That makes a philosophical point of startling insignificance. Every revolution needs a battle cry, but "back to the sty!" is a loser.

*Le Petit Théâtre de Jean Renoir* offers a relevant postscript to what I have been saying. I don't much like the picture; it was made for French television and it combines sentimentality with potted social comment at the level customary on the home screen. Two of the episodes—one a Christmas weeper adapted from Hans Christian Andersen; the other a mock-opera about a woman enamored of her electric floor waxer—are too banal to discuss, and Renoir's appearance as "sponsor" of the offerings comes uncomfortably close to Alfred Hitchcock's cute performances of that function.

However, the final episode describes a "revolution" against convention that illustrates what is wrong with the *lumpen* nihilism of Blier's film. An elderly landowner and retired naval commander (Fernand Sardou) has a young wife (Françoise Arnoul), who is much troubled by "nerves." Along comes a doctor (Jean Carmet), who becomes part of the *ménage*, thus relieving the wife's restlessness and restoring to his host the domestic tranquillity he prizes above all other felicities. The lovers are discovered, scandal flares through the Midi village, the doctor offers himself to the husband as the victim of a duel.

Instead, the old man bundles the young people into his car and drives down to the town square. There he challenges a pal to a game of *boules* and, on his making a brilliant shot, his opponent says, "my friend, you are so lucky at games, you must be a cuckold at home." The husband looks at him for a moment, then begins to chuckle and then to laugh. And all across the square the expectant onlookers add their laughter to an exultant chorus of purging hilarity. The point being that you can overthrow any convention if you have something sufficiently valuable—in this case forbearance and mutual affection—to put in its place. This piece, too, is a bit sentimental, but Renoir is at least operating from a concept of human dignity that seems not to have occurred to the people responsible for *Going Places*. □

# ART

## LAWRENCE ALLOWAY

There is no doubt about the number, energy and high caliber of American artists today, and now there is a strong move to fill our past with artists too. There is a multitude of revivals, from the 19th century (no longer a rejected century) to Reginald Marsh and Thomas Hart Benton. These are revivals that signal changes of sensibility and of aesthetics, but in addition there are rediscoveries that confirm existing canons of taste. For instance, the painter Gerald Murphy, best known as the presumed model for Scott Fitzgerald's Dick Diver, is a pleasant artist who occupies a spot between Léger and Pop art. William Rubin suggests, à propos of "Razor" and "Watch," a "precise (and no doubt unconsciously effected) stylistic equilibrium between the naïveté of American primitivism and the sophistication of French Cubism, two sources that surprisingly shared more common ground than one would think. (Or perhaps not surprisingly, given the relation of the Douanier Rousseau to Cubism.)" Why, then, an "unconscious" equilibrium? Murphy's output was small, the period in which he painted was brief, and the Museum of Modern Art has put together a compact exhibition of the surviving works. Rubin's catalogue proposes a rearrangement of Murphy's seven-year chronology with the satisfying precision of a detective clearing up a locked-room mystery.

Joan Mitchell's paintings of the 1970s, recently at the Whitney Museum, big, warmly painted, rich, suggest an artist at an excellent point of her working life. The pictures are fluent and confident: they depend on imagery and a sense of space that are continuous with her earlier work. There is no sign of her tiring of them, no sense that the known

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motif is no longer sufficient for her. She works without restlessness. Her forms allude, as always, to nature, though every opening out of the canvas into space is counteracted by the physicality of the paint or by the parallelism of painted forms and picture edges. In fact, the disposition of smallish rectangles of various sizes, on vertical and horizontal axes, is very similar to Rothko's paintings of 1948, before he formulated his tiers of color, though Mitchell's use of paint is something else. A majority of the paintings are paired or tripled, so that the expanding horizontal sequence is cut by the abutting canvas edges, a cursory accent in contrast to the complex animated paint and atmospheric color. Marcia Tucker suggests in the catalogue that "the use of multiple panels in her works becomes a means of alluding to the passage of time." It is true: in a painting like "Clearing" the black and blue areas change position in the three canvases in a way to suggest three successive episodes rather than three segments of a panoramic space.

The interpretation of Giacometti was dominated for years by two essays on his work by Jean-Paul Sartre. They are brilliant pieces, but exaggerate the significance of Giacometti's skinny figures in space as emblems of "the human condition." Traces of this grandiose notion persist in Reinhold Hahl's text for the Guggenheim Museum's Giacometti *retrospective*. He writes: "The 'totality of life' is the closest verbalization we can propose for the mythical dimension of Giacometti's conceptual ideas." In fact, the Giacometti show suggests the opposite: it is not an excess of content, but a diminution of it that the development of his art reveals. His earlier sculptures, associated with surrealism, simmer with sexual and sadistic implications, but not so the later works. The attenuated figures are the husks of meanings.

The situation is clarified by looking at his paintings and drawings. The paintings rest on the format of portraiture as codified in the 16th century and the drawings systematize the scrupulous hesitations of Cézanne. There is thus a manneristic display of the conventions of portraiture, but done in a way that signals doubt of their authority. The residual human presence of Giacometti's two figure sitters, Annette and Diego, recur in the artificiality of art rather than in the concreteness of personal identity. Similarly with the sculpture, though its reliance on precedent is less blatant. Giacometti's figures are fatigued abbreviations and repetitions that draw their meaning from art, fuller and plumper art traditions, rather than from other experiences. □



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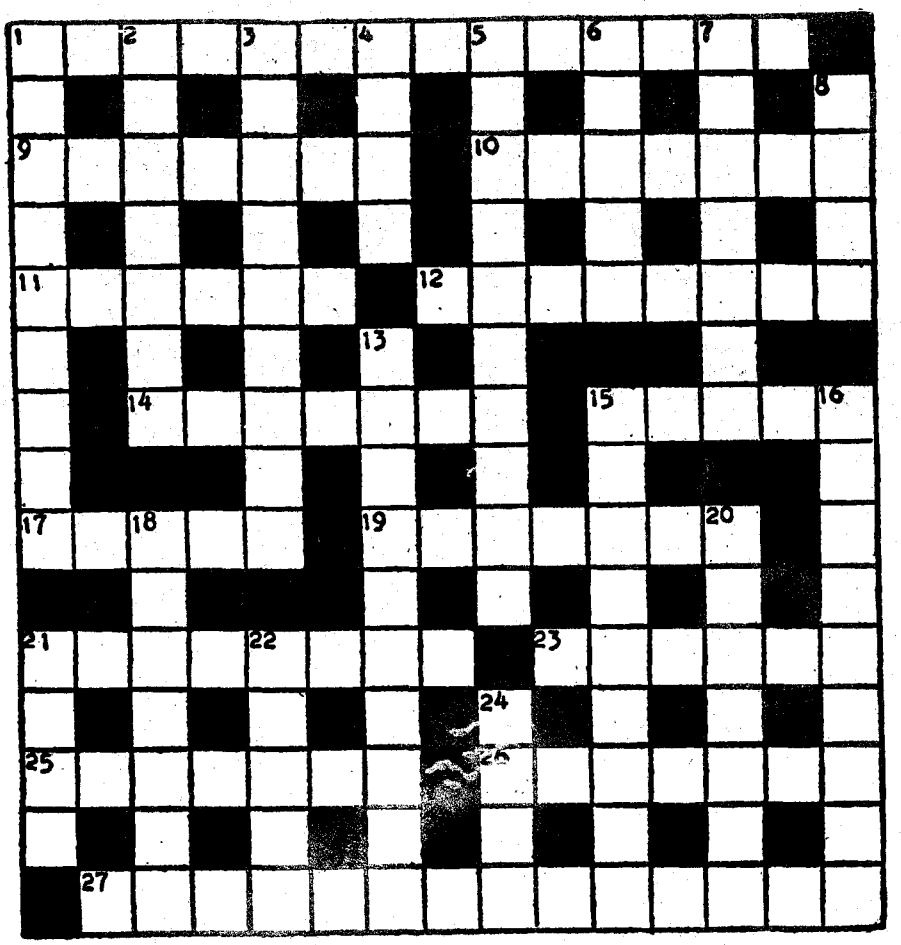
# Crossword Puzzle No. 1540

**FRANK W. LEWIS**



ACROSS

1 Freer, by his act. (7,7)
9 Bird the French get traditionally warmed up. (7)
10 One of those things Henry borrowed from a seaside agenda. (7)
11 Please pass out! (6)
12 See 13 down
14 Does one make sense out of Morse? (7)
15 Throws parts to be divided among them. (5)
17 Assigns a job, or jobs. (5)
19 Africanus was to Scipio as a man gone wrong. (7)
21 How long things last in proportion to the color around it? (8)
23 Kept from having stripes? (6)
25 Bound to be properly supported with confidence, by the sound of it. (7)
26 Ground meat has a certain flavor around this country. (7)
27 The comparison might not hold, as far as the Liberty type is concerned. (2,5,2,1,4)

DOWN

1 The make-up of St. Michael was portrayed by Jonson. (9)
2 and 18 Were his poems, such as *Don Juan*, toney? (7,7)
3 Pulled punches might imply the hose is cut off! (4-5)
4 New wine has to! (4)
5 It might be nicer on the understanding one doesn't get it with such talk! (10)
6 Possibly brace a pole one might try to pitch. (5)
7 National and American distances. (7)
8 Screen portrayal of Shem, possibly. (4)
13 and 12 across Where one might pitch, and yet where a golfer doesn't like to be considered simply good. (1,7,2,3,5)
15 The Bluebell . . . . . (9)
16 . . . . and the Veronica, associated with the Mayflower. (9)
18 See 2 down
20 Act like a teller. (7)
21 Partner for July Fourth, for example. (4)
22 Just the poet to get around a stupid person. (5)
24 How a Siamese starts to find where his home is. (4)

SOLUTION TO PUZZLE NO. 1539

ACROSS: 1 Atelier; 5 and 18 Babes in the wood; 9 Inert; 10 Finalists; 11 Lays waste; 12 Irene; 13 Noodles; 15 Sets out; 17 Extract; 21 Tacky; 23 Embezzles; 25 Elevators; 26 Bimbo; 27 Exposed; 28 Meanest. DOWN: 1 and 2 A girl in every port; 3 In tow; 4 Refuses; 5 Banners; 6 Ballistic; 7 Susie; 8 Nascent; 14 Leap-years; 16 Oriflamme; 17 and 19 across Extreme unction; 19 Unbosom; 20 Nose out; 22 Creep; 24 Zebra.

Readers are invited to send for a free copy of Mr. Lewis' "ground rules." Address Puzzle Department, *The Nation*, 333 Sixth Avenue, New York, N.Y. 10014.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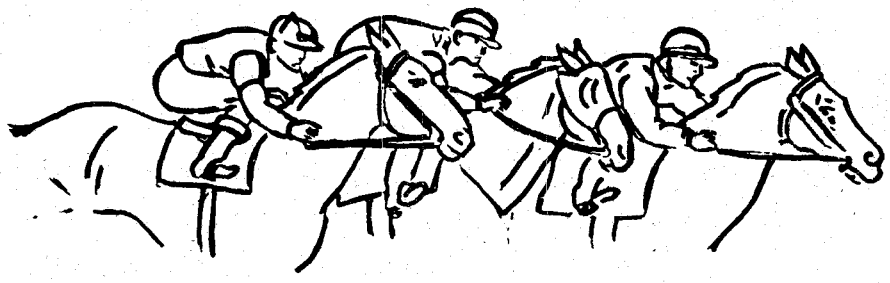

...and the others follow

**Here are 5 cases where The NATION was out front, while other publications trailed behind.**

CASE NO. 1

**May 28, 1973: The NATION runs Joseph C. Goulden's "Warming Up For Watergate" with 1962 as starting point.**

Aug. 16, 1973: The VILLAGE VOICE runs "Prelude to Watergate—The Time Frame Was 1962," by Tom de Vries.

CASE NO. 2

**Oct. 22, 1973: The NATION subscribers read about "Street People: The New Migrants" by Celeste MacLeod.**

Oct. 31, 1973: The SAN FRANCISCO CHRONICLE features "A New Kind of Skid Row" by Marshall Kilduff.

CASE NO. 3

**Mar. 12, 1973: The NATION publishes a serious analysis of a growing trend, "Dinner Theatres" by Jerome Landfield.**

Nov. 11, 1973: The WASHINGTON STAR-NEWS discovers dinner theatres in a piece by Nicholas Howey, "Whither Chowbiz?"

CASE NO. 4

**Mar. 16, 1974: The NATION spotlights "Hawaii Without the Pineapple" by Mary Alice Kellogg.**

Apr. 11, 1974: The WALL ST. JOURNAL's staff reporter, Herbert G. Lawson, covers the same story "End of an Era; The Pineapple Industry in Hawaii Sours"

CASE NO. 5

**Feb. 19, 1973: The NATION prints John Grady's blast, "Administrative Discharges: The 'Less Than Honorable' Solution."**

July 8, 1973: Washington's THE SUNDAY STAR and DAILY NEWS runs "Rethinking the 'Bad Discharge' System," by Raymond P. Boulanger.

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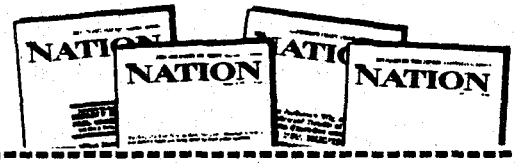


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